No. 93-5770

In The

Supreme Court of the United States

October Term, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of California

JOINT APPENDIX
VOLUME II, pages 247-514

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[2213] THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, MR. STANSBURY ARE PRESENT.

OFFICER BELL IS ON THE STAND.

I BELIEVE MR. ROBUSTO WAS EXAMINING.

AND YOU MAY PROCEED, SIR.

MR. ROBUSTO: THANK YOU, YOUR HONOR.

DARLENE BELL, +
WITNESS, RESUMES STAND AND TESTIFIES FURTHER AS FOLLOWS:

DIRECT EXAMINATION + (CONT'D)

BY MR. ROBUSTO:

Q. DETECTIVE BELL, WHEN WE LEFT OFF YESTERDAY. WE WERE TALKING ABOUT YESTERDAY IF THERE WAS ANYBODY IN THE INTERVIEW ROOM WITH YOU, MR. STANSBURY AND MR. JOHNSTON. YOU INDICATED NO.

IS THAT CORRECT?

A. RIGHT.

Q. YOU WERE PRESENT DURING THE ENTIRE CONVERSATION BEFORE – STRIKE THAT.

AT SOME POINT IN TIME YOU LEFT THE INTERVIEW ROOM.

[2214] IS THAT CORRECT?

A. YES.

Q. DO YOU REMEMBER WHAT TYPE OF QUESTIONS LIEUTENANT JOHNSTON WAS ASKING OF MR. STANSBURY?

A. YES.

Q. AND WHAT TYPE OF QUESTIONS WAS HE ASKING?

A. HE ASKED HIM HIS NAME, WHERE HE LIVED, TALKED ABOUT HIS EMPLOYMENT, HE HAD AN ICE CREAM TRUCK, THE DESCRIPTION OF IT, THE ROUTE THAT HE USED IN BALDWIN PARK, PEOPLE THAT MR. STANSBURY LIVED WITH, VEHICLES THAT WERE USED THAT HE HAD ACCESS TO TO [sic] USE.

THEY TALKED ABOUT ROBYN, THERE WAS A PHOTOGRAPH SHOWN, AND THEY TALKED ABOUT HER.

THEY TALKED ABOUT MR. STANSBURY'S ARREST RECORD.

Q. NOW, PRIOR TO ASKING ANY QUESTIONS OF MR. STANSBURY, DID LIEUTENANT JOHNSTON INDICATE TO MR. STANSBURY THE PURPOSE OF HAVING MR. STANSBURY INTERVIEWED?

A. YES.

Q. WHAT DID MR. JOHNSTON SAY?

A. THAT HE POSSIBLY COULD BE A WITNESS.

Q. NOW, YOU INDICATED THAT MR. JOHNSTON WAS ASKING SPECIFIC QUESTIONS.

IS THAT CORRECT?

A. YES. WAS ASKING HIM QUESTIONS.

Q. YES.

WAS MR. STANSBURY ANSWERING THOSE QUESTIONS SPECIFICALLY AND THEN STOPPING?

[2215] A. NO.

Q. WAS MORE OF A NARRATIVE TYPE?

A. YES.

Q. NOW, YOU'VE INDICATED THAT YOU HAD NO INFORMATION ABOUT THIS CASE PRIOR TO THAT INTERVIEW.

IS THAT CORRECT?

A. I HAD A LITTLE BIT OF INFORMATION.

Q. BUT NOTHING REAL FACTUAL.

IS THAT CORRECT?

A. NO.

Q. MR. STANSBURY TALKED ABOUT A GAS STATION.

IS THAT CORRECT?

A. YES.

Q. YOU WERE PRESENT?

A. YES.

Q. DO YOU REMEMBER WHAT MR. STANSBURY SAID ABOUT A GAS STATION?

A. YES.

Q. WOULD YOU RELATE THAT?

A. THAT HE STOPPED AT A SERVICE STATION ON ARROW HIGHWAY; THAT THE SERVICE STATION WAS THE TYPE THAT WAS THE SERVE YOURSELF.

THE CASHIER'S BOOTH WAS BY THE STREET, AND HE THOUGHT IT WAS A SAV-MOR SERVICE STATION.

Q. NOW, YOU REMEMBER THAT SPECIFICALLY?

A. YES, I DO.

Q. NOW, DID YOU REVIEW ANY POLICE REPORTS BEFORE TESTIFYING TODAY?

[2216] A. YES, I DID.

Q. WAS THAT LIEUTENANT JOHNSTON'S POLICE REPORT?

A. YES, IT WAS.

Q. AND DID YOU REVIEW THAT STATEMENT THAT WAS IN THAT PARTICULAR POLICE REPORT?

A. YES.

Q. NOW, DID YOU HAVE INFORMATION THAT AT SOME POINT IN TIME ON THAT PARTICULAR EVENING, SEPTEMBER 29TH, 1982, THAT MR. STANSBURY WAS CHARGED WITH A CRIME?

A. I'M SORRY. I DON'T UNDERSTAND WHAT YOU'RE SAYING.

Q. WAS MR. STANSBURY ARRESTED THAT EVENING?

A. WHICH EVENING?

Q. SEPTEMBER 29TH, 1982, THE EVENING THAT WE'RE TALKING ABOUT.

A. YES.

Q. AND YOU KNEW HE WAS ARRESTED?

A. YES.

Q. HE WAS ARRESTED FOR THE MURDER OF ROBYN JACKSON.

IS THAT CORRECT?

A. YES.

Q. AND ON OCTOBER 4TH, YOU WENT TO A PARTICULAR GAS STATION.

ISN'T THAT CORRECT?

MR. BURNS: OBJECTION, YOUR HONOR. BEYOND THE SCOPE OF THEIR MOTION. NOT RELEVANT TO THE QUESTION AT HAND.

[2217] THE COURT: MR. ROBUSTO, DO YOU WISH TO BE HEARD?

MR. ROBUSTO: YES, I DO, YOUR HONOR.

PART OF THE MOTION, YOU HAVE A MIRANDA ISSUE BEFORE THE COURT.

THE ISSUE IS WHETHER OR NOT MR. STANSBURY WAS A SUSPECT AND WHETHER OR NOT HE WAS MIRANDIZED AT THE APPROPRIATE TIME.

THERE IS ALSO COROLLARY TYPE ISSUE THAT STEMS FROM THIS PARTICULAR MOTION IN THAT IF THIS IS NOT A PROPER INTERVIEW, AND IF MR. STANSBURY SHOULD HAVE BEEN MIRANDIZED AT AN APPROPRIATE TIME, FRUITS OF THIS PARTICULAR INTERVIEW, WHICH WERE ESTABLISHED BY THE POLICE AGENCIES INVOLVED, SHOULD NOT BE ADMITTED INTO EVIDENCE.

WE'RE ASKING THAT NOT ONLY THE STATEMENTS BE SUPPRESSED BUT THE FRUITS OF THAT STATEMENT.

MR. BURNS: YOUR HONOR, AT THIS POINT THERE WAS NO MOTION, IF MY RECOLLECTION SERVES ME, DIRECTED TO ANY FRUITS.

THE ONLY MOTION ORIGINALLY FILED BY THE DEFENSE WAS A MOTION TO SUPPRESS MR. STANSBURY'S STATEMENT.

THAT WAS WHAT WAS REQUESTED IN THE ORIGINAL MOVING PAPERS, NUMBER ONE.

NUMBER TWO, THE ISSUE AT THIS POINT IN TIME IS SIMPLY A DETERMINATION AS TO WHETHER OR NOT THERE WAS A MIRANDA VIOLATION.

CERTAINLY IT WOULD BE ARGUED AT THIS POINT IN TIME, THERE HAS BEEN NOTHING ON THE RECORD TO ESTABLISH [2218] WHETHER OR NOT THERE WAS A MIRANDA VIOLATION.

THIRDLY, WITH REGARD TO THE POSSIBILITIES OF FRUITS AT THAT POINT IN TIME, THAT SHOULD BE AN ISSUE THAT SHOULD BE DISCUSSED ONLY

AFTER THE COURT RULES THERE HAS BEEN A MIRANDA VIOLATION.

THERE COULD THEN BE A MOTION TO SUPPRESS.

HE'S SEEKING TO GO INTO WHAT IS CLEARLY JUST A BLANKET FISHING EXPEDITION AT THIS POINT IN TIME UNDER THE GUISE OF SOMEHOW BEING CONNECTED WITH AN ALLEGED MIRANDA VIOLATION, WHICH HAS NOT BEEN ESTABLISHED. CERTAINLY HAS NOT BEEN RULED ON.

IF THERE SHOULD BE A RULING THAT THERE IS A VIOLATION, THEN SUBSEQUENTLY WE CAN GO INTO THIS AREA.

THE COURT: I'M INCLINED TO AGREE, MR. ROBUSTO.

IF I FIND THAT THERE IS SOME VIOLATION IN REGARDS TO THE MIRANDA ISSUE, THEN WE WOULD EXPLORE WHERE THAT MIGHT LEAD IN TERMS OF TESTIMONY.

IF I FIND THAT THERE IS NOT ANY VIOLATION OF DEFENDANT'S RIGHTS, THEN IT DOESN'T MAKE ANY DIFFERENCE WHAT THEY DID IN RESPONSE TO THAT.

IS THAT CORRECT?

MR. ROBUSTO: NO, YOUR HONOR. IT'S NOT CORRECT.

THE COURT: WELL THAT'S BLUNT.

MR. ROBUSTO: THE REASON IT'S NOT CORRECT IS BECAUSE, NUMBER ONE, – I WOULD LIKE TO RESPOND TO MR. BURNS' COMMENT, NOTHING ABOUT FRUITS OF THE POISONOUS TREE BEFORE THE COURT.

IN THAT PARTICULAR MOTION, A REQUEST THAT [2219] FRUITS OF THE POISONOUS TREE OR FRUITS BE SUPPRESSED AS A RESULT OF THE IMPROPER MIRANDA.

AND WOULD ALSO ARGUE TO THE COURT AND RESPECTFULLY REQUEST THE COURT TO ALLOW ME TO PROCEED AT THIS POINT IN TIME FOR JUST A TIME SAVING FACTOR.

IF THERE IS A MOTION TO STRIKE AT A LATER TIME AND THE COURT RULES THAT'S APPROPRIATE, THEN NO HARM, NO FOUL.

THE COURT: HOW LONG DO YOU THINK IT'S GOING TO TAKE YOU TO PURSUE THIS LINE OF QUESTIONS?

MR. ROBUSTO: NO MORE THAN A FEW SECONDS.

THE COURT: OVERRULED.

YOU MAY PROCEED.

BY MR. ROBUSTO:

Q. DETECTIVE BELL, DID YOU GO TO A PARTICULAR GAS STATION AS A RESULT OF THE INFORMATION YOU ACQUIRED FROM MR. STANSBURY DURING THE INTERVIEW WITH MR. STANSBURY ON SEPTEMBER 29TH, 1982?

A. YES.

Q. AND YOU WENT TO THAT PARTICULAR GAS STATION AS A RESULT OF THE INFORMATION THAT YOU ACQUIRED FROM MR. STANSBURY?

A. YES.

Q. NOW, DID – PRIOR TO THE INTERVIEW WITH MR. STANSBURY, DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY'S PRIOR RECORD?

A. NO.

Q. DID YOU RUN A RAP SHEET ON MR. STANSBURY?

[2220] A. NO.

Q. DID ANYBODY FROM BALDWIN PARK POLICE DEPARTMENT RUN A RAP SHEET ON MR. STANSBURY?

A. NOT THAT I KNOW OF.

Q. DID ANY OTHER OFFICER COMMUNICATE TO YOU HIS PRIOR RECORD?

A. NO.

Q. NOW, YOU INDICATED THAT YOU WENT TO A PARTICULAR GAS STATION ON ARROW HIGHWAY.

IS THAT CORRECT?

A. YES.

Q. WHAT GAS STATION DID YOU GO TO?

A. I'M REALLY NOT SURE OF THE NAME, BUT I KNOW IT'S RIGHT BY SEARS.

I BELIEVE IT IS A SAV-MOR.

Q. AND AS A RESULT OF GOING TO THAT GAS STATION, YOU ENDED UP TALKING TO A WITNESS BY THE NAME OF BEVERLY ALLEN.

IS THAT CORRECT?

A. YES.

MR. ROBUSTO: I HAVE NOTHING FURTHER, YOUR HONOR.

MR. BURNS: NO QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

YOU ARE FREE TO GO, OFFICER. THANK YOU.

THE COURT: MR. DAUGHERTY, YOU'RE NEXT.

MR. DAUGHERTY: YOUR HONOR, AS FAR AS I'M CONCERNED, I HAVE SUBMITTED ALL THE EVIDENCE THAT I FELT WAS APPROPRIATE ON THIS MOTION.

[2221] THE COURT: OKAY, SO YOU'RE RESTING THEN AT THIS POINT ON THE MOTION?

MR. DAUGHERTY: MR. STANSBURY HAS SOME ADDITIONAL EVIDENCE TO PRESENT ON THE MOTION.

THE COURT: ALL RIGHT. FINE.

MR. STANSBURY?

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME I WOULD LIKE TO CALL DETECTIVE JOHNSTON TO THE STAND.

THE COURT: RECALL DETECTIVE JOHNSTON?

DEFENDANT STANSBURY: YES.

THOMAS JOHNSTON, +
DEFENSE WITNESS, HAVING BEEN PREVIOUSLY SWORN, TESTIFIES FURTHER AS FOLLOWS:

THE CLERK: YOU'RE STILL UNDER OATH.

JUST TAKE THE STAND. STATE YOUR NAME FOR THE RECORD.

THE WITNESS: THOMAS JOHNSTON. J-O-H-N-S-T-O-N.

DIRECT EXAMINATION +

BY DEFENDANT STANSBURY:

Q. LIEUTENANT JOHNSTON, I BELIEVE WE ESTABLISHED THAT YOU WERE WORKING FOR THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT ON SEPTEMBER 28TH OF 1982?

A. THAT'S CORRECT.

Q. ON SEPTEMBER THE 29TH, UPON YOUR CONDUCTING THE INTERVIEW WHICH WAS HELD BY YOU IN THE POMONA POLICE [2222] DEPARTMENT, I BELIEVE YOU CLARIFIED THAT IT WAS MORE THAN ANYTHING ELSE A NARRATIVE.

IS THAT CORRECT?

A. THERE WERE PORTIONS THAT WERE NARRATIVE.

I DON'T KNOW IF I MADE A DETERMINATION THAT THE MAJORITY WAS NARRATIVE OR NOT.

Q. AT THAT TIME, DID YOU ADVISE ME OF WHAT THE PARTICULAR POSSIBLE ITEMS I MAY HAVE WITNESSED WAS, OR ANYTHING OF THAT NATURE?

A. AT THE BEGINNING OF THE INTERVIEW, YES.

Q. YOU DID?

A. YES, SIR.

Q. COULD YOU TELL US EXACTLY WHAT YOU SAID AT THAT TIME?

A. TO THE BEST OF MY RECOLLECTION, I ADVISED YOU THAT I WAS INVESTIGATING CIRCUMSTANCES SURROUNDING THE DISAPPEARANCE OF A YOUNG GIRL FROM THE BALDWIN PARK AREA ON THE PREVIOUS AFTERNOON.

Q. WAS THERE ANY ONGOING REQUEST FOR FURTHER INFORMATION MADE BY MYSELF?

A. NOT THAT I RECALL.

Q. DID I AT ANY TIME REQUEST TO LEAVE FOR THE PURPOSE OF OBTAINING SOME CIGARETTES?

A. NO.

Q. COULD YOU DESCRIBE THE LOCATION OF THE INTERROGATION ROOM SLIGHTLY BETTER THAN YOU HAVE ALREADY?

A. NO.

Q. I BELIEVE YOU SPECIFIED THAT IT WAS IN THE [2223] GENERAL AREA OF THE BOOKING AREA?

A. IT WAS IN CLOSE PROXIMITY OF THE BOOKING AREA OF THE POMONA POLICE DEPARTMENT, YES.

Q. WHEN YOU SAY CLOSE PROXIMITY, CAN YOU GIVE US SOME TYPE OF AN ESTIMATION AS TO HOW CLOSE?

A. NOT ACCURATELY, NO.

Q. WELL, COULD YOU GIVE US AN APPROXIMATION?

A. I RECALL THAT IT WAS DOWN THE CORRIDOR FROM THERE.

I RECALL THEIR BOOKING COUNTER WAS ON THE OTHER SIDE OF THE HALLWAY.

HOW FAR DOWN THE HALLWAY, AGAIN, IT WOULD BE MY BEST RECOLLECTION AT THIS TIME, BUT IT SEEMS TO ME PERHAPS EIGHT TO TEN FEET.

Q. EIGHT TO TEN FEET DOWN THE HALLWAY?

A. TO THE BEST OF MY RECOLLECTION, YES.

Q. UPON GOING INTO THAT AREA, I BELIEVE YOU PREVIOUSLY SPECIFIED THAT YOU HAD BEEN UPSTAIRS?

A. I HAD BEEN, YES, SIR.

Q. AND UPON LEAVING UPSTAIRS AND GOING TO THAT AREA, DID YOU HAVE TO GO IN THROUGH ANY LOCKED DOORS?

A. I UNDERSTAND THAT THERE WAS A DOOR THAT WOULD BE LOCKED FOR A PERSON GOING FROM THE JAIL AREA INTO THE POLICE STATION PROPER, BUT I DO NOT RECALL IF IT WAS LOCKED IN THE DIRECTION OF TRAVEL THAT I TOOK.

Q. ARE YOU INSINUATING THAT THAT WOULD BASICALLY BE A DETENTION AREA?

A. WELL, IT WOULD BE WITHIN THE JAIL FACILITY, [2224] YES.

Q. WHICH IS A DETENTION AREA?

A. IT WOULD BE A SECURED FACILITY.

Q. SECURED FACILITY?

A. YES.

Q. MEANING THAT AN INDIVIDUAL COULD NOT JUST GET UP AND WALK OUT FROM HIS OWN FREE WILL UNLESS SOMEONE OPENED THE DOOR FOR HIM?

A. RIGHT. THE DOOR WOULD HAVE TO BE UNLOCKED BY SOMEBODY WHO HAD CONTROL OF THE DOOR.

Q. WHEN I DESCRIBED THE GAS STATION – WELL STRIKE THAT, PLEASE.

UPON YOUR BEGINNING OF THE INTERVIEW, DID YOU, OR COULD YOU TELL US WHAT YOU SAID AT THAT TIME OR WHAT QUESTIONS YOU ASKED AT THAT MOMENT?

A. IT HAD TO BE IN REFERENCE TO YOUR BEING IN THE BALDWIN PARK AREA ON THE PREVIOUS DATE, SOMETHING IN THE WAY OF ADDRESSING THAT AREA AND THAT PARTICULAR DATE.

BUT SPECIFICALLY, I COULDN'T RECALL.

Q. DO YOU RECALL ASKING ME ANYTHING RELATING TO THE ROUTE I MAY HAVE TAKEN TO GET THERE?

A. YES, SIR.

Q. WAS THERE ANY SPECIFIC REASON FOR THAT?

THE COURT: EXCUSE ME, FOR WHAT?

DEFENDANT STANSBURY: FOR HIM ASKING ME THE ROUTE TO GET TO BALDWIN PARK?

THE WITNESS: THE ROUTE TO BALDWIN PARK?

[2225] BY DEFENDANT STANSBURY:

Q. YES.

A. NO, NO SPECIFIC REASON THAT I CAN RECALL.

Q. DID YOU ASK ME SPECIFICALLY WHAT I HAD DONE FROM THE TIME I GOT UP THAT MORNING?

A. NOT SPECIFICALLY, NO.

Q. OR DID YOU ASK ME UNSPECIFICALLY?

A. I DID NOT INQUIRE REGARDING YOUR EVERY ACTION FROM THE TIME YOU GOT UP THAT MORNING.

Q. DID YOU ASK ME WHAT I HAD DONE PRIOR TO GOING TO BALDWIN PARK?

A. NO.

Q. DID YOU ASK ME WHERE I HAD LOADED WITH ICE CREAM THAT MORNING?

A. NO.

Q. DID YOU ASK ME IF I HAD GOTTEN ANY OTHER MERCHANDISE THAT MORNING?

A. NO.

Q. DID YOU ASK ME WHAT TIME I HAD ARRIVED IN BALDWIN PARK?

A. I DON'T KNOW IF I ASKED SPECIFICALLY THAT.

HOWEVER, I KNOW THAT IS INFORMATION THAT I HAVE AS A RESULT OF THE INTERVIEW.

Q. DID YOU ASK ME WHAT TIME I LEFT THE TRAILER THAT MORNING?

A. NO.

Q. DID YOU ASK ABOUT VARIOUS AREAS I HAD DRIVEN EARLY THAT MORNING WITHIN BALDWIN PARK?

[2226] MR. BURNS: YOUR HONOR, I'LL OBJECT AS VAGUE AT THIS POINT IN TIME.

WHEN HE SAID EARLIER THAT MORNING, I'M NOT SURE WHAT HE'S REFERRING TO.

THE COURT: WOULD YOU READ THE QUESTION BACK TO ME.

(THE RECORD WAS READ BY THE REPORTERS)

THE COURT: DO YOU UNDERSTAND THAT QUESTION?

THE WITNESS: YES, SIR.

THE COURT: YOU MAY ANSWER IT.

THE WITNESS: YOUR ROUTE WITHIN BALDWIN PARK BEGINNING AT 10 OR 11, WHICH WAS YOUR ESTIMATED TIME OF ARRIVAL IN BALDWIN PARK WAS DISCUSSED, YES.

BY DEFENDANT STANSBURY:

Q. WAS THE INTERROGATION AT ANY TIME TAPED IN ANY WAY?

A. NO.

Q. IS THAT OF YOUR OWN PERSONAL KNOWLEDGE, OR COULD IT HAVE BEEN TAPED WITHOUT YOUR KNOWLEDGE?

A. IT'S HARDLY LIKELY THAT IT WOULD BE TAPED WITHOUT MY KNOWLEDGE.

Q. IS THERE ANY POLICY REGARDING TAPING OF POSSIBLE WITNESSES, COMMENTS OR ANYTHING IN HOMICIDE CASES?

A. NO.

Q. I BELIEVE YOU TESTIFIED EARLIER THAT THIS INVESTIGATION OR INTERROGATION LASTED IN THE NEIGHBORHOOD OF AN HOUR, HOUR AND A HALF?

A. I NEVER TESTIFIED TO THAT.

[2227] Q. WELL, VERY WELL.

HOW LONG DID IT LAST APPROXIMATELY?

A. TO THE BEST OF MY RECOLLECTION, IT DIDN'T EXCEED ONE-HALF AN HOUR.

Q. IT DID NOT EXCEED ONE-HALF OF AN HOUR?

A. THAT'S MY BEST RECOLLECTION.

Q. DO YOU RECALL WHAT TIME IT BEGAN?

A. JUST APPROXIMATELY.

Q. WHAT WOULD THAT HAVE BEEN?

A. 2300 HOURS, WHICH IS 11 P.M..

Q. DO YOU RECALL WHAT TIME I WAS BOOKED?

A. NO, BUT THAT SHOULD BE ON YOUR BOOKING SLIP.

DEFENDANT STANSBURY: I'M SORRY, YOUR HONOR. MAY I HAVE A MOMENT?

THE COURT: YOU CERTAINLY MAY, MR. STANSBURY.

MR. ROBUSTO: MR. BURNS HAS A COPY OF THE BOOKING SLIP, YOUR HONOR.

DEFENDANT STANSBURY: SO THEREFORE –

THE COURT: EXCUSE ME, DO YOU WANT TO LOOK AT THATBEFORE YOU ASK THE QUESTION?

DEFENDANT STANSBURY: I BELIEVE I ALREADY KNOW THE ANSWER TO THE QUESTION I WISH TO ASK, YOUR HONOR.

THE COURT: ALL RIGHT, FINE.

DEFENDANT STANSBURY: I WAS ATTEMPTING TO SEE IF WE HAD A COPY IN OUR FILES SO THAT I COULD PERHAPS USE IT AT A LATER TIME.

THE COURT: ALL RIGHT.

[2228] BY DEFENDANT STANSBURY:

Q. SO THEREFORE, IF THE INTERROGATION STARTED AT APPROXIMATELY 11 P.M. AND LASTED FOR APPROXIMATELY 30 MINUTES, ARE YOU SAYING THAT IT WOULD HAVE BEEN FINISHED BY 11:30?

A. I OBJECT TO THE WORD, INTERROGATION, MR. STANSBURY, IT WAS AN INTERVIEW.

AND IF IT STARTED AT 11 P.M., IT CERTAINLY WOULD HAVE BEEN TERMINATED IN THE AREA OF 11:30 P.M., YES.

Q. HOW LONG WOULD IT HAVE BEEN TAKEN OR SHOULD IT HAVE TAKEN TO BOOK ME?

A. THE ACTUAL PHYSICAL ACT OF BOOKING YOU?

Q. YES.

A. THERE'S A NUMBER OF VARIABLES THAT ENTER INTO THAT QUESTION SUCH AS WHO WAS DOING THE BOOKING, THE FAMILIARITY WITH THE LOCATION, THE PROCEDURES AT THAT PARTICULAR LOCATION.

IF YOU WERE TO BE BOOKED INTO A SHERIFF'S FACILITY, ONE THAT I WAS FAMILIAR WITH IT, BOOKING COULD PROBABLY BE ACCOMPLISHED WITHIN 15, 20 MINUTES.

Q. BUT ONE THAT YOU WERE NOT FAMILIAR WITH, WHICH I BELIEVE YOU SPECIFIED YOU WERE NOT ACQUAINTED WITH THE POMONA POLICE DEPARTMENT?

A. THAT IS CORRECT.

Q. HOW LONG COULD THAT HAVE TAKEN?

A. I DON'T RECALL.

Q. COULD IT HAVE TAKEN 20 MINUTES?

A. MINIMALLY, SURE.

[2229] Q. 30?

A. POSSIBLY.

Q. COULD IT HAVE TAKEN AS LONG AS 45 MINUTES?

A. IT'S POSSIBLE, YES.

Q. IT COULD TAKE AS LONG AS 45 MINUTES TO GO EIGHT FEET AND FILL OUT A PERSON'S BOOKING SLIP?

A. TO COMPLETE A BOOKING, IT'S MORE THAN FILLING OUT A BOOKING SLIP, MR. STANSBURY.

Q. IS THE STANDARD POLICY TO WRITE DOWN THE TIME AT THE BEGINNING OF FILLING OUT THE BOOKING SLIP?

A. I BELIEVE THAT'S FILLED OUT AT THAT PARTICULAR POINT WHEN THE BOOKING SLIP IS ARRIVED AT.

I DON'T KNOW WHETHER THERE'S A SET POLICY DESIGNATING EXACTLY WHAT SPECIFIC POINT IN TIME REFERENCE TO THE CUSTODY OF A PERSON THAT HAS TO BE ENTERED IN THE BOOKING SLIP, ITSELF.

Q. BUT IT IS ONE OF THE FIRST QUESTIONS ON THE BOOKING SLIP, ONE OF THE FIRST?

A. WELL, IT'S NEAR THE BEGINNING OF THE BOOKINGSLIP, YES.

[2230] Q. SO JUST TO GET TO THAT POINT, APPROXIMATELY HOW LONG WOULD IT TAKE AS THEY WALKED IN, APPROXIMATELY EIGHT FEET?

A. WITH THE BOOKING SLIP IN HAND, YOU WOULD, WITH THE COOPERATION OF THE SUSPECT, PROBABLY ARRIVE AT THAT POINT IN THE BOOKING SLIP WITHIN FIVE MINUTES.

Q. WAS I UNCOOPERATIVE IN ANY WAY?

A. NO.

Q. SO, THEREFORE, THAT PART AT LEAST SHOULD HAVE BEEN FILLED OUT WITHIN FIVE MINUTES?

A. FROM THE BEGINNING OF THE BOOKING SLIP ITSELF, YES.

DEFENDANT STANSBURY: MR. BURNS, COULD I POSSIBLY BORROW YOUR BOOKING SLIP FOR A FEW MOMENTS?

MR. BURNS: I HAVE A COPY, A PHOTOCOPY OF THE BOOKING SLIP WHICH I'M NOW HANDING TO THE DEFENSE TEAM.

THE COURT: THE RECORD WILL SO REFLECT.

DEFENDANT STANSBURY: MAY I APPROACH?

THE COURT: YOU CAN HAVE MR. SMITH OR IF YOU WISH, MAYBE IT WOULD BE BETTER. JUST HAVE ONE OF THE ATTORNEYS DO THAT.

WOULD YOU MIND DOING THAT, MR. DAUGHERTY OR, MR. ROBUSTO.

I'D RATHER NOT TIE UP MR. SMITH DOING ANY OF THOSE THINGS.

BY DEFENDANT STANSBURY:

Q. WOULD YOU PLEASE REVIEW THE BOOKING SLIP IN QUESTION AT THIS POINT, MR. JOHNSTON?

[2231] A. CERTAINLY.

ALL RIGHT.

Q. WHAT TIME DOES IT STATE ON THERE THAT I WAS BOOKED?

A. 0030 HOURS; THAT WOULD BE 12:30 A.M.

Q. WHICH WOULD HAVE BEEN APPROXIMATELY AN HOUR AND A HALF – I MEAN APPROXIMATELY ONE HOUR AFTER THE INTERVIEW HAD BEEN COMPLETED?

A. IT WOULD BE ONE HOUR APPROXIMATELY TO THE BEST OF MY RECOLLECTION FROM THE TERMINATION OF THE FIRST INTERVIEW.

Q. SO THEREFORE, GOING BY THE BOOKING SLIP, IT TOOK APPROXIMATELY AN HOUR TO GO THAT EIGHT FEET?

MR. BURNS: OBJECTION, YOUR HONOR.

I'LL WITHDRAW THE OBJECTION.

THE COURT: YOU MAY ANSWER.

THE WITNESS: IT DIDN'T TAKE AN HOUR TO GO EIGHT FEET, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. WELL, I'M TRYING TO FIND OUT THE REASON FOR THE DISCREPANCY.

THE COURT: WHY DON'T YOU JUST ASK THAT QUESTION, IF THAT'S WHAT YOU WANT.

BY DEFENDANT STANSBURY:

Q. CAN YOU EXPLAIN THE DISCREPANCY, MR. JOHNSTON?

A. CERTAINLY.

UPON THE TERMINATION OF THE FIRST INTERVIEW, [2232] THERE WAS A DISCUSSION BETWEEN THE INVESTIGATORS, A RESUMPTION OF AN INTERVIEW WITH YOU WHICH AT THAT POINT WAS IN THE FORM OF AN INTERROGATION.

THE PERIOD OF TIME THAT PARTICULAR ENCOUNTER REQUIRED FOLLOWED BY FURTHER DISCUSSION BY THE INVESTIGATORS, SPECIFIC AS TO AN ARREST AT THAT PARTICULAR TIME, FURTHER DISCUSSION RELATIVE TO THE ADVANTAGES OR DISADVANTAGES OF BOOKING MR. STANSBURY AT POMONA POLICE DEPARTMENT VERSUS THE SHERIFF'S FACILITY OR VERSUS MAIN CENTRAL JAIL.

THERE WAS A NUMBER OF DISCUSSIONS THAT TOOK PLACE PRIOR TO YOUR BEING TAKEN EIGHT FEET AND THE BOOKING PROCEEDINGS STARTING.

Q. THANK YOU.

DURING THE COURSE OF THE INTERVIEW, MR. JOHNSTON, I BELIEVE THAT YOU SPECIFIED THE ROUTE WHICH I HAD RETURNED ON THAT DATE ON THE 28TH WAS DISCUSSED.

IS THAT CORRECT?

A. YES.

Q. AND DO YOU RECALL WHAT MY COMMENTS WERE RELATING TO THAT QUESTION?

A. YOU INDICATED THAT YOU TOOK ARROW HIGHWAY TO POMONA, WHICH WAS CONTRARY TO

YOUR NORMAL ROUTE OF TRAVEL, WHICH WAS TO USE THE 10 FREEWAY.

BASED ON THE PERFORMANCE OF YOUR VEHICLE, YOU INDICATED THAT YOU DIDN'T FEEL THAT IT WAS PERFORMING SATISFACTORY ENOUGH TO HAVE NEGOTIATED KELLOGG HILL ON THE 10 FREEWAY.

[2233] Q. I DID NOT SAY THAT I DID NOT RECALL THE STREET OR ANY PLACE OF THAT NATURE?

A. THERE WERE SOME STREET NAMES THAT YOU WERE UNAWARE OF.

ARROW HIGHWAY WAS A ROADWAY THAT YOU SPECIFICALLY NAMED, YOUR ROUTE NORTH IN BALDWIN PARK TO ARROW HIGHWAY WAS NOT SPECIFICALLY IDENTIFIED.

ANY PARTICULAR ROADS EAST ON ARROW HIGHWAY INTO POMONA WERE NOT SPECIFICALLY IDENTIFIED.

Q. BUT YOU'RE SAYING THAT I DID SPECIFICALLY IDENTIFY THE FILLING STATION AS HAVING BEEN ON ARROW HIGHWAY?

A. YES, YOU DID.

Q. WAS I VERY SPECIFIC ABOUT THE PARTICULAR STATION AT THAT LOCALITY?

A. IN YOUR DESCRIPTION, IT ELIMINATED THE POSSIBILITY OF THE USUAL STANDARD TYPE STATION AS OPPOSED TO THE SERVICE STATION WHERE

YOU PULLED IN AND THE SERVICE BASE AND THE CASHIER BOOTHS AND EVERYTHING ARE THE NORMAL SERVICE STATION, PREVIOUSLY NORMAL SERVICE STATION.

YES, WE ELIMINATED A SERVICE STATION WITH A SEPARATE BUILDING, YES.

Q. HOW DID YOU ELIMINATE THIS?

A. BY YOUR DESCRIPTION. THE CASHIER'S BOOTH WAS CLOSE JUST OFF THE STREET AND WITHIN THE PUMPS AREAS THEMSELVES.

Q. YOU DID NOT ASK VARIOUS QUESTIONS RELATING TO THAT AREA?

[2234] A. RELATING TO THAT AREA?

Q. THE STATION.

A. WELL, WHEN YOU GAVE THAT DESCRIPTION, I SAID SO, THE – IT ISN'T AN ISLAND WITH THE BUILDING OFFSET FROM THE ISLAND. AND YOU SAID NO.

Q. DID YOU ASK ANY OTHER QUESTIONS RELATING TO THAT FILLING STATION?

A. POSSIBLY IN REFERENCE TO IF YOU RECALL THE NAME, THE NAME OR THE BRAND OF THE STATIONS.

Q. WAS I AT ANYTIME OR DID I AT ANYTIME APPEAR UNCERTAIN AS TO THE AREA OF THE STATION IN ANY WAY?

A. ONLY AS TO ITS LOCATION ON ARROW HIGHWAY.

Q. ONLY AS TO ITS LOCATION ON ARROW HIGHWAY. WELL, WAS I AT ANYTIME UNCERTAIN AS TO THE STREET IT WAS ON?

A. THE STREET IT WAS ON, NO.

Q. I WAS NOT.

DO YOU RECALL TESTIFYING EARLIER THAT I HAD SAID I DID NOT KNOW THE STREET OR THE NEAREST INTERSECTION OR THE ADDRESS OR EVEN THE NAME OF THE SERVICE STATION, EXCEPT THAT IT WAS JUST OR REAL – JUST RIGHT OFF THE STREET AND THE CASHIER'S BOOTH WAS IMMEDIATELY IN THE PUMP AREA.

DO YOU RECALL ANY STATEMENTS TO THAT EFFECT BY YOURSELF?

A. PORTIONS OF THAT QUESTION.

YOU ASKED TOO MANY QUESTIONS IN THAT QUESTION, MR. STANSBURY, FOR A DEFINITE YES OR NO.

[2235] Q. VERY WELL.

SO THAT YOU CAN GIVE A DEFINITE YES OR NO, DO YOU RECALL THAT I STATED I HAD STOPPED FOR GAS?

A. YES.

Q. DO YOU RECALL THAT YOU ASKED ME WHERE THAT SERVICE STATION WAS?

A. YOU VOLUNTEERED. WHEN YOU SAID YOU STOPPED FOR GAS, YOU VOLUNTEERED THAT IT WAS ON ARROW HIGHWAY.

Q. I ASKED YOU DID YOU ASK ME –

A. IF YOU STOPPED –

Q. IF I HAD STOPPED FOR GAS?

A. NO.

Q. DID YOU TESTIFY TO THAT YESTERDAY?

A. I DON'T KNOW IF THAT QUESTION WAS SPECIFICALLY ASKED YESTERDAY.

IF I HAD TESTIFIED TO IT, IT WOULD BE THAT I DID NOT ASK THAT QUESTION.

Q. YOU DID NOT?

DID YOU ASK ME WHERE THE STATION WAS LOCATED?

A. AFTER YOU DESCRIBED A SERVICE STATION ON ARROW HIGHWAY, I MAY HAVE ASKED YOU IF YOU COULD BE MORE SPECIFIC.

Q. DID YOU OR DID I AT THAT TIME TELL YOU THAT I DID NOT KNOW THE NAME OF THE STREET?

A. NO.

Q. DID I TELL YOU I DID NOT KNOW THE NAME OF THE NEAREST INTERSECTION?

MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT.

[2236] IF THERE APPEARS TO BE SOME FORM OF PRIOR INCONSISTENT STATEMENT WHICH COUNSEL IS REFERRING TO, I DON'T BELIEVE IT IS AT THIS POINT IN TIME BECAUSE MR. STANSBURY IS TRYING

TO ASK HIM IF HE KNEW WHICH STREET THE GAS STATION WAS ON, AND THE OFFICER'S INDICATING NO.

AND HIS QUESTION OR THE TRANSCRIPT WHICH HE'S REFERRING TO IS THE PRIOR STATEMENT BY THE OFFICER THAT MR. STANSBURY DID NOT KNOW WHAT THE CROSS STREETS OR THE NEAREST STREET OR NEAREST INTERSECTION ON ARROW HIGHWAY WAS.

THE QUESTION WHICH HE'S ASKING THE OFFICER NOW IS DID I AT THAT TIME TELL YOU I DIDN'T KNOW WHAT THE STREET THE GAS STATION IS ON. HIS ANSWER WAS NO, YOU KNOW, IT WAS ON ARROW HIGHWAY.

HE'S NOW ASKING WHETHER OR NOT HE MADE A PREVIOUS STATEMENT THAT THE GAS STATION WAS ON SOME OTHER STREET OTHER THAN ARROW HIGHWAY.

IF HE'S GOING TO ATTEMPT TO IMPEACH BY SOME PRIOR INCONSISTENT STATEMENT, HE'S GOING TO HAVE TO AT SOME POINT SHOW THE WITNESS THE PRIOR STATEMENT HE'S REFERRING TO.

DEFENDANT STANSBURY: MAY I AT THIS TIME, YOUR HONOR, ASK THE LEGAL BASIS FOR THE OBJECTION?

THE COURT: I BELIEVE – EXCUSE ME. MR. BURNS?

MR. BURNS: YES, YOUR HONOR.

HE'S ATTEMPTING TO ASK THE WITNESS CONCERNING SOME PRIOR TESTIMONY WITHOUT SHOWING THE WITNESS OR GIVING [2237] THE WITNESS AN OPPORTUNITY TO VIEW THAT TESTIMONY.

DEFENDANT STANSBURY: I BELIEVE I AM ENTITLED TO ASK THE QUESTIONS FIRST, YOUR HONOR, AND OBTAIN AN ANSWER AT WHICH TIME I CAN THEN ASK THE WITNESS TO REVIEW THE TESTIMONY GIVEN.

I BELIEVE THAT IS REFERRED TO UNDER THE EVIDENCE CODE.

THE COURT: OVERRULED.

YOU MAY ANSWER, OFFICER.

IS THERE A QUESTION PENDING?

DEFENDANT STANSBURY: YES, I STILL HAVE A COUPLE OF QUESTIONS IN THIS AREA.

I DON'T RECALL THE LAST QUESTION I ASKED.

THE COURT: ASK ANOTHER ONE.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY THAT I DID NOT KNOW THE STREET OR THE NEAREST INTERSECTION?

MR. BURNS: OBJECTION, YOUR HONOR; VAGUE AND AMBIGUOUS AS TO WHAT, AS TO WHAT POINT IN TIME, WHEN THE TESTIMONY WAS OR IN RELATIONSHIP TO WHAT QUESTION.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: VERY WELL.

BY DEFENDANT STANSBURY:

Q. ON SEPTEMBER THE 29TH OF 1982, SOMETIME BETWEEN THE HOUR OF 11 TO 12:00 P.M., IN THE INTERROGATION ROOM OR THE POMONA POLICE DEPARTMENT, AT WHICH TIME I BELIEVE YOU'VE ALREADY SPECIFIED WE WERE BOTH PRESENT, DID I DURING YOUR QUESTIONING SPECIFY THAT I DID NOT KNOW THE [2238] STREET OR THE NEAREST INTERSECTION OF THAT PARTICULAR GAS STATION?

MR. BURNS: OBJECTION, YOUR HONOR; AGAIN, VAGUE.

STREET OR INTERSECTION OF THAT GAS STATION MEANING WHAT? STREET OR INTERSECTION NEAR OR WHERE THAT GAS STATION WAS NEAR OR THAT GAS STATION FACED, WHERE THAT GAS STATION WAS NORTH OR SOUTH OF, I DON'T KNOW WHAT HE MEANS WHEN HE'S IDENTIFYING STREET OR INTERSECTION WITH RESPECT TO THE GAS STATION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU ASK IF I KNEW THE NAME OF THE STREET THAT THE GAS STATION WAS ON?

A. NO.

Q. DID I SAY I DID NOT KNOW THE NAME OF THE STREET THAT THE GAS STATION WAS ON?

A. NO.

Q. DID YOU TESTIFY THAT I SAID I DID NOT KNOW THE NEAREST INTERSECTION LOCATED CLOSEST TO THE FILLING STATION?

MR. BURNS: OBJECTION, YOUR HONOR, VAGUE AND AMBIGUOUS, TESTIFIED AT WHAT POINT IN TIME IN RESPONSE TO WHAT QUESTION.

MR. DAUGHERTY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES.

I WANT YOU TO READ THAT QUESTION BACK TO ME, PLEASE. FIND IT.

[2239] WHEN THEY FINISH THE CONFERENCE, I WANT YOU TO READ IT BACK.

(PAUSE IN PROCEEDINGS.)

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY YESTERDAY, OFFICER –

THE COURT: YOU'RE ASKING ANOTHER QUESTION NOW?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT, FINE.

YOU MAY PROCEED.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY YESTERDAY, OFFICER JOHNSTON, THAT – AND I WILL QUOTE DIRECTLY FROM THE TRANSCRIPT.

MR. BURNS: IN THAT CASE, YOUR HONOR, REQUEST A PAGE NUMBER.

DEFENDANT STANSBURY: ON PAGE 2107.

MR. BURNS: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES, YOU MAY.

MR. BURNS: WHAT VOLUME NUMBER ARE WE DEALING WITH?

MR. DAUGHERTY: 32?

DEFENDANT STANSBURY: 31.

MR. BURNS: VOLUME 31, PAGE?

DEFENDANT STANSBURY: LINE 8.

THE COURT: HE'S TALKING ABOUT PAGE 2107.

MR. BURNS: THANK YOU.

DEFENDANT STANSBURY: LINE 8 THROUGH 15.

THE COURT: YOU MAY PROCEED, MR. STANSBURY.

[2240] DEFENDANT STANSBURY: WELL, HE SAID HE STOPPED FOR GAS. AND I ASKED HIM IF HE RECALLED WHERE OR WHAT SERVICE STATION IT WAS, WHERE IT WAS LOCATED.

AND HE SAYS NO, HE DOESN'T KNOW THE STREET OR THE NEAREST INTERSECTION OR THE ADDRESS OR EVEN THE NAME OF THE SERVICE STATION, EXCEPT THAT IT WAS REAL – JUST RIGHT OFF

THE STREET AND THAT THE CASHIER'S BOOTH WAS IMMEDIATELY IN THE PUMP AREA.

DO YOU RECALL MAKING THAT STATEMENT, MR. JOHNSTON?

A. YES.

Q. IS THAT A TRUE STATEMENT?

A. IT'S NOT A COMPLETE STATEMENT.

Q. IT'S NOT A COMPLETE STATEMENT?

A. NO.

Q. YOU SAID SOMETHING FOLLOWING THAT?

A. THAT RESPONSE WAS GIVEN AS ADDITIONAL INFORMATION EXCEEDING MY KNOWLEDGE OF ARROW HIGHWAY.

Q. EXCEEDING YOUR KNOWLEDGE?

A. THE INFORMATION I HAD RECEIVED FROM YOU THAT IT WAS ON ARROW HIGHWAY, IT WAS IN RESPONSE TO A QUESTION CONCERNING ANY FURTHER INFORMATION ON THAT SERVICE STATION.

Q. DID YOU MAKE ANY FURTHER COMMENTS RELATING TO MY NOT KNOWING THE VICINITY OR ANYTHING, MR. JOHNSTON?

MR. BURNS: OBJECTION, VAGUE AS TO POINT IN TIME, COMMENTS IN TESTIMONY, COMMENTS AT THE TIME OF THE INTERVIEW?

[2241] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU MAKE ANY FURTHER STATEMENTS ON YESTERDAY'S DATE RELATING TO SEPTEMBER THE 29TH OF 1982 CONCERNING MY KNOWLEDGE OF THE LOCALITY OF THE FILLING STATION?

MR. BURNS: I'LL OBJECT. I DON'T EVEN UNDERSTAND THE QUESTION.

ARE WE ASKING HIM DID HE MAKE ANY STATEMENTS YESTERDAY CONCERNING WHAT HE SAID THAT DAY OR – I'LL OBJECT TO IT AS VAGUE.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY ON YESTERDAY'S DATE –

A. YES.

Q. – THAT I HAD MADE ANY FURTHER STATEMENTS ON SEPTEMBER THE 29TH OF 1982 RELATING TO MY LACK OF KNOWLEDGE OF THE LOCALITY OF THE FILLING STATION?

THE COURT: ARE YOU ASKING, MR. STANSBURY, IF HE REMEMBERS OR DO YOU WANT HIM TO LOOK AT THE TRANSCRIPT TO SEE?

DEFENDANT STANSBURY: I'M ASKING IF HE RECALLS HAVING TESTIFIED, YOUR HONOR.

THE COURT: ALL RIGHT. DO YOU UNDERSTAND THE QUESTION, SIR?

THE WITNESS: NO, SIR.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY ON A [2242] COUPLE OF DIFFERENT OCCASIONS CONCERNING THE LACK OF MY PERSONAL KNOWLEDGE OF THE LOCALITY OR AREA OF THE STATION, THE FILLING STATION ON SEPTEMBER THE 28TH OF 1982 OR SEPTEMBER 29TH OF 1982?

A. I MAY HAVE.

Q. DO YOU RECALL STATING THAT I HAD SPECIFIED THAT I HAD TO GO ON AN UNUSUAL ROUTE FROM MY REGULAR ROUTE OF TRAVEL –

MR. BURNS: YOUR HONOR, AT THIS POINT, I'LL OBJECT AS BEYOND – NOT DIRECTED TO ANY ISSUES OF MIRANDA, UNLESS HE'S TRYING TO GO OVER THE WITNESS' PRIOR STATEMENT.

THE WITNESS ALREADY TESTIFIED TODAY, JUST A FEW MOMENTS AGO, THAT HIS RECOLLECTION WAS THAT MR. STANSBURY HAD TOLD HIM THAT HE HAD TAKEN A DIFFERENT ROUTE BECAUSE OF CAR PROBLEMS.

I DON'T KNOW THAT WE'RE GOING TO ANY ISSUE DEALING WITH MIRANDA, EXCEPT TO REHASH QUESTIONS THAT WERE ALREADY ASKED, IN WHICH CASE I'LL OBJECT AS ASKED AND ANSWERED.

THE COURT: YOUR RESPONSE, SIR?

DEFENDANT STANSBURY: AS FAR AS IT GOING TO MIRANDA, I BELIEVE IT WOULD GO DIRECTLY TO MIRANDA, SINCE IT WAS ALLEGEDLY,

PORTIONS OF THE STATEMENT, WHICH WERE OBTAINED PRIOR TO BEING MIRANDIZED.

AND IN ADDITION TO THAT, IT WOULD GO TOWARDS THE RECOLLECTION OF THE WITNESS' MEMORY AT THAT TIME.

MR. BURNS: YOUR HONOR, THE QUESTION AT THIS TIME IS DOES HE REMEMBER WHAT HE TESTIFIED TO YESTERDAY, NOT [2243] WHAT TOOK PLACE IN SEPTEMBER OF 1982 AND HE'S ASKING HIM DOES HE REMEMBER TESTIMONY YESTERDAY.

IF THE TESTIMONY OCCURRED YESTERDAY IT'S ASKED AND ANSWERED. IF IT DIDN'T, ASK HIM A NEW QUESTION. IN EITHER EVENT, IT'S IRRELEVANT TO THE PROCEEDINGS.

DEFENDANT STANSBURY: I BELIEVE THAT I AM IN REALITY USING THE SAME ARGUMENT CONCERNING THE WITNESS – THE MEMORY OF THE WITNESS THAT MR. BURNS USED FOR PRACTICALLY AN ENTIRE WEEK IN ORDER TO KEEP ME ON THE WITNESS STAND.

AND I BELIEVE HIS PARTICULAR OBJECTION WAS UPHELD AT ALL TIMES IN THAT AREA RELATING TO THE MEMORY OF THE INDIVIDUAL WHO WAS ON THE WITNESS STAND AT THAT TIME.

I'M SIMPLY USING MR. BURNS' OWN ARGUMENT RELATING TO THE WITNESSES WHO IS ON THE WITNESS STAND AT THIS TIME.

MR. BURNS: YOUR HONOR, THAT'S NOT CORRECT.

I ASKED MR. STANSBURY QUESTIONS CONCERNING HIS RECOLLECTION OF INCIDENTS CONCERNING THE DATE IN QUESTION. THE QUESTION AT THIS TIME IS NOT WHAT DID THIS OFFICER REMEMBER FROM WHAT TOOK PLACE AT THE TIME OF THE INTERVIEW.

THE QUESTION WHICH IS PENDING IS DO YOU REMEMBER WHAT YOU SAID YESTERDAY ABOUT THAT INTERVIEW, WHICH IS NOT AT ISSUE. AND THAT'S WHAT I'M OBJECTING TO.

IF HE'S ALREADY TESTIFIED TO IT, IT'S ASKED AND ANSWERED.

DEFENDANT STANSBURY: TO WHICH I WOULD REPLY –

[2244] THE COURT: EXCUSE ME. I DON'T REMEMBER THE QUESTION NOW, GENTLEMEN, I'M SORRY.

DO YOU REMEMBER THE QUESTION, MR. STANSBURY?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT.

ASK IT AGAIN.

DEFENDANT STANSBURY: I ASKED MR. JOHNSTON REMEMBERED HIS TESTIFYING YESTERDAY CONCERNING HIS MEMORY OF 1982 IN SEPTEMBER AS TO WHAT HAD BEEN SAID.

THEREFORE, I AM RE-ASKING THE QUESTION OF WHAT HIS MEMORY WAS YESTERDAY RELATING TO HIS MEMORY OF 1982.

THE COURT: ALL RIGHT.

ANTICIPATING ALL THE ARGUMENTS YOU'VE JUST STATED I'M GOING TO OVERRULE THE OBJECTION.

DO YOU UNDERSTAND THE QUESTION, SIR?

THE WITNESS: NO.

BY DEFENDANT STANSBURY:

Q. DID I AT THAT TIME OR DID YOU, YESTERDAY, TESTIFY THAT ON SEPTEMBER THE 29TH OF 1982 I HAD MADE A STATEMENT THAT I HAD TO FOLLOW AN UNUSUAL ROUTE FROM MY NORMAL ROUTE OF TRAVEL SO THAT IT TOOK SOMETIME FOR ME TO GET HOME?

A. YES.

Q. DID YOU LATER ASK ME IF I HAD STOPPED FOR GAS?

A. NO.

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY [2245] RELATING TO YOUR MEMORY OF THE INTERVIEW IN QUESTION IN SEPTEMBER THE 29TH OF 1982 THAT YOU DID ASK ME WHERE I HAD STOPPED FOR GAS?

A. I ASKED YOU WHERE, NOT IF.

Q. DO YOU RECALL HAVING ASKED WHAT KIND OF A SERVICE STATION IT WAS?

A. YES.

Q. DID I AT THAT TIME STATE THAT IT WAS PROBABLY DOWN THE ROAD FROM BALDWIN PARK ON ARROW?

A. YOU INDICATED THAT WHEN YOU ADVISED VOLUNTARILY THAT YOU HAD STOPPED FOR GAS ON ARROW HIGHWAY AFTER LEAVING BALDWIN PARK.

Q. I SAID THAT IT WAS PROBABLY DOWN IN THE ROAD ON ARROW?

A. OR –

MR. BURNS: OBJECTION, YOUR HONOR.

THE WITNESS IS NOW – I GUESS, THE ATTORNEY IS NOW TESTIFYING AS TO WHAT HE SAID. IF HE WANTS TO PUT IT IN THE PHRASE OF A QUESTION, THAT'S FINE.

MR. DAUGHERTY: MR. BURNS IS MAKING THAT OBJECTION?

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID I SAY IT WAS PROBABLY DOWN THE ROAD ON ARROW?

A. DOWN – SPECIFICALLY, I CANNOT RECALL THE EXACT WORDS.

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY THAT I HAD IN SEPTEMBER OF 1982 ON THE 29TH DAY SPECIFIED THAT [2246] IT WAS PROBABLY

DOWN THE ROAD FROM BALDWIN PARK ON ARROW HIGHWAY?

A. THAT WAS THE DEFINITELY THE INFORMATION THAT I UNDERSTOOD YOU TO SAY. WHETHER OR NOT YOU SAID SPECIFICALLY DOWN THE ROAD, AGAIN, THE INFORMATION IS ACCURATE. THE PHRASEOLOGY MAY NOT BE.

Q. GOING OVER YOUR TESTIMONY, MR. JOHNSTON, IT WOULD APPEAR TO ME AND I DON'T KNOW, THAT I MAY HAVE BEEN SOMEWHAT CONFUSED AS TO THE AREA I DID TAKE ON THAT DATE.

SO THEREFORE, I WOULD ASK YOU THE QUESTION AT THIS TIME –

MR. BURNS: OBJECTION, MOTION TO STRIKE, ARGUMENTATIVE, NOT A QUESTION.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. DID I APPEAR CONFUSED DURING THE COURSE OF THAT INTERVIEW, DETECTIVE JOHNSTON?

A. NO.

Q. DID, I GIVE IMMEDIATE ANSWERS AT ALL TIMES?

A. YES.

Q. THERE WAS NO HESTITATION ON MY PART?

A. ONLY WHERE YOU WERE UNABLE TO NAME A STREET.

Q. DID THAT OCCUR VERY OFTEN?

A. NO.

Q. I BELIEVE YOU SPECIFIED THAT YOU WERE PRESENT WHEN A – I WON'T ATTEMPT TO PRONOUNCE HIS LAST NAME EITHER, THE FIRST NAME BEING YUSUF, NYANGANIRA, I BELIEVE, CO-COUNSEL HAS SPECIFIED, THAT YOU WERE PRESENT WHEN HIS [2247] LOCATION WAS ENTERED?

A. WHEN HIS RESIDENCE WAS ENTERED, YES. YES, I WAS.

[2248] Q. DO YOU RECALL SPECIFICALLY WHO IT WAS THAT HAD KNOCKED ON THE DOOR?

A. TO THE BEST OF MY RECOLLECTION IT WAS MYSELF.

Q. DO YOU RECALL WHO WAS THERE WITH YOU WHEN YOU KNOCKED ON THE DOOR?

A. WELL, SERGEANT PATTERSON AND DEPUTY RIORDAN.

AND FROM MY DEPARTMENT, OFFICER BELL, LEE – I DON'T KNOW WHETHER LEE'S PARTNER WAS THERE.

THEY WERE PROBABLY IN REASONABLE PROXIMITY TO ME AT THE TIME I KNOCKED ON THE DOOR.

Q. WAS SERGEANT HIGGENBOTHAM IN THE AREA?

A. I DON'T KNOW IF HE ENTERED THE APARTMENT COMPLEX OR IF HE DID –

Q. MY QUESTION WAS WAS SERGEANT HIGGENBOTHAM IN THE AREA?

A. I DON'T RECALL.

Q. WHAT CONSTITUTES THE AREA?

A. WITHIN 100, 150, 200 FEET.

Q. THE GENERAL AREA I WOULD CERTAINLY CONSIDER WITHIN A HALF A BLOCK?

A. THEN HE CERTAINLY WAS THERE.

Q. DO YOU RECALL APPROXIMATELY WHERE HE MAY HAVE BEEN?

A. NO.

Q. AT THIS TIME, COULD I PLEASE ASK YOU TO PERHAPS TURN THE PAGE OF THE SHEETS UP THERE AND DRAW SOME TYPE OF A BASIC DIAGRAM TO THE BEST OF YOUR ABILITY FROM YOUR MEMORY OF THE LOCALITY THAT MR. YUSUF WAS LOCATED.

[2249] MR. BURNS: OBJECT AT THIS TIME ON THE GROUNDS Of RELEVANCY.

THE COURT: DO YOU WISH TO RESPOND? HOW IS THAT RELEVANT TO YOUR MOTION?

DEFENDANT STANSBURY: I'M ATTEMPTING TO SHOW PRIOR ACTIONS OF OFFICERS BEFORE INTERVIEWING ME WITH AN ALLEGED WITNESS WHO WAS PRESUMABLY CATEGORIZED IN THE SAME CATEGORY THAT THE OFFICER CLAIMS I WAS CATEGORIZED TO SHOW THEIR PARTICULAR ACTIONS DURING THAT COURSE OF TIME.

AND THIS WAS IMMEDIATELY PRIOR TO THEIR CONTACT WITH ME.

THE COURT: MAY I SUGGEST THAT AT THIS POINT IF THERE IS TESTIMONY AS TO HOW MR. YUSUF, WHAT HIS CATEGORY WAS AS COMPARED TO YOUR CATEGORY AS OPPOSED TO WHETHER HE WAS A SUSPECT AS OPPOSED TO A WITNESS. IT MAY BE RELEVANT TO THAT QUESTION.

WHY DON'T YOU INQUIRE INTO THAT.

MAY I SUGGEST YOU INQUIRE INTO THAT FIRST. DO YOU UNDERSTAND MY QUESTION?

DEFENDANT STANSBURY: NO, SIR, I DIDN'T.

THE COURT: DO YOU UNDERSTAND MY QUESTION, MR. DAUGHERTY?

MR. DAUGHERTY: YES, I BELIEVE SO.

THE COURT: WOULD YOU MIND - I'M GOING TO SUSTAIN THE OBJECTION.

BY DEFENDANT STANSBURY:

Q. AT THAT TIME, DETECTIVE JOHNSTON, WAS YUSUF A PROSPECTIVE WITNESS OR A SUSPECT OR WHAT?

[2250] A. BOTH.

Q. HE WAS BOTH.

UPON YOUR ARRIVAL YOU SPECIFIED -

THE COURT: MAY I ASK A QUESTION, MR. STANSBURY?

DEFENDANT STANSBURY: CERTAINLY.

THE COURT: WHEN YOU PICKED UP MR. STANSBURY, WAS HE A PROSPECTIVE WITNESS OR A SUSPECT?

THE WITNESS: WITNESS.

THE COURT: HE WAS IN A DIFFERENT CATEGORY THAN YOU CATEGORIZED YUSUF IN THAT RESPECT?

THE WITNESS: YES.

BY DEFENDANT STANSBURY:

Q. DETECTIVE JOHNSTON, COULD YOU PLEASE EXPLAIN WHY I WAS IN A SEPARATE CATEGORY FROM MR. YUSUF?

A. THE INFORMATION THAT I HAD OBTAINED THROUGHOUT THE DAY LED MORE SPECIFICALLY TO A MALE BLACK HAVING BEEN LAST SEEN IN CONTACT WITH ROBYN JACKSON FOLLOWING HER LEAVING HER RESIDENCE AFTER EATING DINNER.

Q. AND YOU HAD NO KNOWLEDGE IN ANYWAY WHATSOEVER CONCERNING MISS ROBYN JACKSON HAVING SPOKEN TO AN ICE CREAM MAN HAVING RED HAIR AND A RED BEARD?

A. OH, I DID HAVE KNOWLEDGE OF THAT.

Q. WHAT WAS THAT PARTICULAR KNOWLEDGE AT THAT TIME, MR. JOHNSTON?

MR. BURNS: OBJECTION. I'LL OBJECT AT THIS POINT. ASKED AND ANSWERED.

THE COURT: OVERRULED.

YOU MAY ANSWER.

[2251] THE WITNESS: THAT KNOWLEDGE CONCERNED CONVERSATION WITH A MAN WITH RED HAIR AND A RED BEARD INVOLVING ROBYN JACKSON AND JEREMY RAMOS PRIOR TO ROBYN JACKSON GOING TO DINNER.

BY DEFENDANT STANSBURY:

Q. DID YOU RECEIVE ANY INFORMATION CONCERNING JEREMY RAMOS, WORDS OR THOUGHTS IN THAT PARTICULAR AREA RELATING TO A RED-HEADED MAN WITH A BEARD?

A. INFORMATION THAT I HAD RECEIVED FROM MRS. SANCHEZ AND THE OTHER WOMAN WAS THAT JEREMY RAMOS HAD INDICATED TO THEM – IT WAS THEIR UNDERSTANDING FROM INFORMATION FROM JERRY RAMOS THAT HE HAD SEEN ROBYN JACKSON WITH THE MAN WITH THE RED HAIR AND THE BEARD AFTER THE DINNER HOUR.

Q. AFTER DINNER HOUR?

A. THAT WAS THE INFORMATION THOSE TWO PEOPLE GAVE US BASED ON THEIR CONVERSATION WITH JEREMY RAMOS.

Q. WHEN WAS THAT INFORMATION IMPARTED TO YOU, IF YOU RECALL?

A. PRIOR TO MY INTERVIEW WITH JEREMY RAMOS.

Q. WAS THIS PRIOR TO YOUR FIRST INTERVIEW OR YOUR SECOND INTERVIEW, OR DO YOU RECALL?

A. TO MY RECOLLECTION, IT WOULD BE MY FIRST INTERVIEW.

Q. SO, THEREFORE, YOU DID HAVE SOME TYPE OF KNOWLEDGE REGARDING JEREMY RAMOS HAVING PERHAPS SEEN AN INDIVIDUAL WITH RED HAIR AND A RED BEARD PRIOR TO INTERVIEWING ME?

[2252] A. YES.

Q. DO YOU RECALL –

THE COURT: MAY I ASK ANOTHER QUESTION, MR. STANSBURY; MAY I ASK ANOTHER QUESTION?

DEFENDANT STANSBURY: YES.

THE COURT: AFTER YOU TALKED TO MISS SANCHEZ AT THAT POINT, THEN DID YOU HAVE A CONVERSATION WITH HIM, THE RAMOS BOY?

THE WITNESS: YES.

THE COURT: YOU'VE TESTIFIED TO THAT BEFORE, AS I RECALL.

THE WITNESS: YES, SIR.

THE COURT: AND WHAT WAS THE INFORMATION THAT THE RAMOS BOY GAVE YOU AGAIN?

THE WITNESS: HE TOLD US THAT HE HAD BEEN PRESENT WHEN THERE WAS A CONVERSATION WITH ROBYN JACKSON AND THE ICE CREAM

MAN WITH THE RED BEARD PRIOR TO THEM GOING TO DINNER TO ROBYN JACKSON'S HOUSE.

AND FOLLOWING THE DINNER, HE SAW ROBYN JACKSON APPROACH AND SPEAK TO A BLACK MAN IN A BLUE ICE CREAM TRUCK UP THE STREET FROM THE VICTIM'S RESIDENCE.

THE COURT: AT THIS POINT WE'LL BE IN RECESS UNTIL 1:30.

THANK YOU, OFFICER.

YOU MAY STEP DOWN.

(AT 12:00 NOON, A RECESS WAS TAKEN UNTIL 1:30 P.M. OF THE SAME DAY.)

[2253] POMONA, CALIFORNIA; THURSDAY, 11-01-84;
* 1:40 P.M. DEPT. EAST H
HON. JAMES H. PIATT, JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, MR. STANSBURY ARE PRESENT.

I BELIEVE, MR. STANSBURY, THAT YOU WERE EXAMINING OFFICER JOHNSTON.

YOU MAY PROCEED, SIR. YOU MAY CONTINUE.

THOMAS JOHNSTON, +
WITNESS, RESUMES STAND AND TESTIFIES FURTHER AS FOLLOWS:

DIRECT EXAMINATION + (CONT'D)

BY DEFENDANT STANSBURY:

Q. YOU STATED EARLIER TODAY, LIEUTENANT JOHNSTON, THAT YUSUF WAS CONSIDERED AS A WITNESS AND AS A SUSPECT.

IS THAT CORRECT?

MR. BURNS: AT THIS POINT, I'M GOING TO OBJECT, YOUR HONOR.

I'M GOING TO OBJECT ON A NUMBER OF GROUNDS. WE HAD ESTABLISHED PRIOR, I THOUGHT, AT LEAST PRIOR TO YESTERDAY SOME FORMAT OR UNDERSTANDING AS TO HOW WE WERE GOING TO BE CONDUCTING THESE MOTIONS.

THAT FORMAT, I UNDERSTOOD THOUGH, DESPITE THE [2254] FACT THAT MR. STANSBURY HAS THE BENEFIT OF MULTIPLE COUNSEL IN THIS CASE INCLUDING HIS OWN SERVICES, THAT THERE WAS GOING TO BE ONE ATTORNEY WHO WAS GOING TO HANDLE ONE ASPECT OF THE PROCEEDINGS, WHICHEVER ASPECT THAT WAS IN.

MY FURTHER UNDERSTANDING THAT THE TWO ATTORNEYS WHO WERE GOING TO BE RESPONSIBLE FOR COURTROOM PRESENTATION, MR. STANSBURY

OR MR. DAUGHERTY, THEIR CHOICE, MR. STANSBURY BEING THE PERSON WHO COULD THEN DECIDE IT.

AT THIS POINT IN TIME, WHAT WE ARE SEEING IS A WITNESS WHO WAS CALLED TO THE STAND WHO TESTIFIED ON THE ISSUE OF MIRANDA ON AT LEAST TWO DAYS, TUESDAY AND WEDNESDAY.

HE WAS SUBJECTED TO CROSS-EXAMINATION ON BEHALF OF MR. STANSBURY BY THE THEN ELECTED COUNSEL OR NOMINATED COUNSEL, IF YOU WILL, MR. DAUGHERTY.

MR. DAUGHERTY WAS SELECTED BY THE DEFENSE TEAM TO CONDUCT THE QUESTIONING AND ASK ALL RELEVANT QUESTIONS WHICH HE FELT WAS IMPORTANT OF THIS WITNESS.

IF MR. STANSBURY HAD ANY QUESTIONS HE WISHED TO ASKED, HE COULD HAVE HAD THAT ACCOMPLISHED BY AND THROUGH MR. DAUGHERTY AS ANY DEFENDANT CAN BY AND THROUGH THEIR ATTORNEY.

BY THE SIMPLE DEVICE OR TRICK OR MEANS OF MR. STANSBURY LATER CLAIMING ON A DIFFERENT DATE AND TIME THAT HE NOW WISHES TO RECALL THE SAME WITNESS, WHAT HE'S ESSENTIALLY ATTEMPTING TO DO IS HAVE MR. DAUGHERTY [2255] CROSS-EXAMINE OR ASK QUESTIONS OF A WITNESS.

THEN LATER AT SOME POINT IN TIME, ALLOWING HIMSELF TO ASK QUESTIONS AGAIN, WHICH IS EXACTLY WHY THE COURT HAS DEVELOPED A RULE OR PROCEDURE TO LIMITED EXAMINATION

OR PRESENTATION ON ANY ONE ISSUE IN THIS CASE; WE'RE DEALING WITH QUESTIONING ONE WITNESS TO ONE ATTORNEY PER ONE SIDE.

THE ANALOGOUS SITUATION IS SHOULD THE DISTRICT ATTORNEY'S OFFICE THEN BRING IN A SECOND DISTRICT ATTORNEY IF I WAS DONE QUESTIONING THE WITNESS. AND NOW THE ATTORNEY TO RECALL THE WITNESS TO THE STAND FOR FURTHER EXAMINATION.

THE DEFENSE HAS HAD MORE THAN AN AMPLE OPPORTUNITY OVER TWO DAYS TO CROSS EXAMINE THIS WITNESS. THEY INDICATED THEY HAD NO FURTHER QUESTIONS OF THIS WITNESS.

NOW HE'S BEEN RECALLED BY A DIFFERENT MEMBER OF THAT DEFENSE TEAM. IT SEEMS TO ME THAT BOTH SIDES – THE FACT THAT WE ARE GETTING INTO – AND AGAIN, MR. STANSBURY'S QUESTION IS GOING OVER AREAS THAT WERE ASKED BY MR. DAUGHERTY. SO THAT THE SUBJECT ITSELF IS ASKED AND ANSWERED.

BUT IN ADDITION TO THAT, WE'RE NOW VIOLATING THE PROCEDURE THAT I THOUGHT WE HAD ESTABLISHED.

I WOULD OBJECT TO IT FURTHER CONTINUING.

THE COURT: MR. STANSBURY, DO YOU WISH TO RESPOND?

DEFENDANT STANSBURY: TO SUM IT UP, I WOULD [2256] BASICALLY AGREE WITH MR. BURNS WITH TWO EXCEPTIONS.

NUMBER ONE, AT NO TIME DID I EVER SPECIFY THAT THERE WERE NO OTHER QUESTIONS.

AS A MATTER OF FACT, I HAD A COUPLE OF QUESTIONS THAT I SPECIFICALLY REQUESTED THAT COUNSEL WAS TO ASK WHICH WERE NOT ASKED.

NUMBER TWO, I HAVE BEEN LABORING UNDER THE IMPRESSION THAT I DID NOT RECALL MR. JOHNSTON TO THE STAND; THAT I HAD CALLED MR. JOHNSTON TO THE STAND AS MY WITNESS AT THIS TIME.

THEREFORE, THAT WOULD NOT BE REEXAMINING OR RECALLING THE WITNESS.

THAT WOULD BE CALLING THE WITNESS FOR THE FIRST TIME ON DIRECT EXAMINATION BY THE DEFENSE.

SECONDLY, OR THIRDLY, I GUESS I SHOULD SAY. THAT WOULD IN REALITY MEAN THAT WHILE MR. DAUGHERTY HAD CROSS-EXAMINED UPON MR. BURNS' TERMINATION OF DIRECT EXAMINATION, THAT I'M NOT ON CROSS-EXAMINATION.

I'M ON DIRECT EXAMINATION BECAUSE OF THE FACT THAT I HAVE NOT SUMMONED THIS PARTICULAR WITNESS AS A WITNESS FOR THE DEFENSE RATHER THAN THE PEOPLE.

THE COURT: I'M GOING TO ALLOW THE EXAMINATION OF LIEUTENANT JOHNSTON TO CONTINUE.

HOWEVER, I AGREE WITH MR. BURNS IN THIS RESPECT. I HAVE DEVIATED IN THE FRAMEWORK OF THIS MOTION.

LIEUTENANT JOHNSTON WAS ON THE STAND, WAS EXAMINED EXTENSIVELY BY MR. DAUGHERTY. AND I HAVE ALLOWED THIS TO START.

[2257] THERE WAS NO OBJECTION ORIGINALLY. I SUPPOSE I SHOULD HAVE INTERPOSED MY OWN.

I WOULD INDICATE THIS EXCEPTION TO THAT RULE THAT I HAVE INDICATED IS NOT GOING TO CARRY INTO THE TRIAL.

IT WON'T CONTINUE BEYOND THIS POINT.

I'LL ALLOW YOU TO FINISH WITH MR. JOHNSTON. BUT ONE OF THE MEMBERS OF THE DEFENSE TEAM MAY CONDUCT AN EXAMINATION OF THE WITNESS. AND THEN WE'RE NOT GOING TO ALLOW YOU OR ANYBODY ELSE TO RECALL THAT WITNESS.

YOU'LL HAVE TO POOL YOUR COLLECTIVE THOUGHTS AND RESOURCES AND ASK WHATEVER QUESTIONS YOU THINK ARE APPROPRIATE AT THE ONE TIME.

I AGREE. AND I SPECIFICALLY AT THE TIME OF TRIAL DO NOT WANT IT TO RUN INTO A SITUATION WHERE WE HAVE A WITNESS ON THE STAND WHO CAN BE REPEATEDLY CALLED OR CAN BE RECALLED BY THE MEMBERS OF THE DEFENSE.

I DID INDICATE THAT TO CLARIFY, I'M GOING TO REQUIRE THAT ONCE A WITNESS IS EXAMINED

BY, OR ONE OF THE ATTORNEYS STARTS TO EXAMINE A WITNESS, THAT ATTORNEY HAS TO COMPLETE AND FINISH THAT EXAMINATION.

THE OTHER ATTORNEY CANNOT PARTICIPATE. BUT I'M NOT GOING TO INDICATE THAT ONCE AN ATTORNEY STARTS ONE PHASE OF THE CASE, THAT DIFFERENT ATTORNEYS, INCLUDING IN THAT RESPECT MR. STANSBURY, CANNOT INDIVIDUALLY EACH EXAMINE A SEPARATE WITNESS IF YOU WISH TO DO SO.

IT'S JUST THAT YOU'RE NOT GOING TO HAVE MORE THAN ONE ATTORNEY EXAMINE MORE THAN ONE WITNESS.

[2258] IS THAT CLEAR?

MR. DAUGHERTY: OBVIOUSLY, WE NEVER WANT A SITUATION WHERE WE UNNECESSARILY HAVE TO RECALL A WITNESS.

THERE ARE EXCEPTIONAL SITUATIONS PERHAPS DURING THE TRIAL WHEN IT MAY BE NECESSARY FOR US TO RECALL A WITNESS BECAUSE OF SOME TESTIMONY THAT TAKES PLACE SUBSEQUENT TO THE INITIAL EXAMINATION OF THAT WITNESS.

THE COURT: I UNDERSTAND THAT.

WE'LL CROSS THOSE BRIDGES WHEN WE COME TO THEM IN THIS CASE.

LIEUTENANT JOHNSTON WAS ON THE STAND UP UNTIL YESTERDAY.

YOU RESTED. AND BEFORE THE DAY WAS OUT, HE WAS RECALLED BY ANOTHER MEMBER OF THE DEFENSE TEAM.

AND I WOULD AGREE WITH MR. BURNS. THAT DOES VIOLATE NOT ONLY MY GUIDELINES, BUT I THINK THEY ARE THE SORT OF GUIDELINES THAT MIGHT BE USED IN ANY SORT OF CASE.

I'M NOT TRYING TO ESTABLISH ANY OTHER DIFFERENT GUIDELINES THAN ON ANY OTHER CASE.

I AM GOING TO ALLOW MR. STANSBURY TO COMPLETE THE EXAMINATION OF THIS WITNESS BECAUSE WE STARTED IT.

BUT WE'LL FOLLOW THOSE GUIDELINES IN THE FUTURE.

YOU MAY PROCEED, MR. STANSBURY.

DEFENDANT STANSBURY: THANK YOU, YOUR HONOR.

Q. YOU STATED EARLIER TODAY THAT YUSUF WAS CONSIDERED AS A WITNESS AND A SUSPECT.

IS THAT CORRECT?

[2259] A. NO.

Q. COULD YOU PLEASE REFRESH MY MEMORY THEN AS TO WHAT YOU STATED?

A. POSSIBLE WITNESS, POSSIBLE SUSPECT.

Q. THANK YOU.

I BELIEVE THAT YOU DID CLARIFY THAT I WAS NOT A SUSPECT.

IS THAT CORRECT?

A. YOU WERE NOT A SUSPECT.

Q. VERY WELL.

WHERE WAS YUSUF INTERVIEWED AT?

A. POMONA POLICE DEPARTMENT.

Q. COULD YOU BE A LITTLE MORE SPECIFIC ABOUT THE LOCALITY AND PERHAPS EVEN DESCRIBE IT?

A. IT WAS THE SECOND FLOOR OF THE POMONA POLICE DEPARTMENT INTERVIEW ROOM ADJACENT TO THE DETECTIVE BUREAU.

Q. COULD YOU PERHAPS DRAW SOME TYPE OF A BASIC DIAGRAM TO THE BEST OF YOUR MEMORY AS TO THAT LOCALITY AND THE INTERVIEW ROOM ITSELF.

MR. BURNS: OBJECTION, YOUR HONOR. IRRELEVANT.

AND AGAIN, THIS WHOLE AREA WITH REGARDS TO THE POLICE PRIOR QUESTIONING OF YUSUF IS AN AREA THAT HAS BEEN ASKED AND ANSWERED BY THE DEFENSE TEAM.

IT HAS BEEN COVERED BOTH BY MR. DAUGHERTY BEFORE, AND I BELIEVE MR. STANSBURY THIS MORNING.

BUT THAT MAY NOT BE CORRECT.

AT ANY RATE, MR. DAUGHERTY EXTENSIVELY WENT [2260] INTO THIS AREA.

THE COURT: DO YOU WISH TO MAKE AN OFFER OF PROOF, MR. STANSBURY, WHY YOU THINK THIS TESTIMONY IS DIFFERENT FROM ANY OTHER TESTIMONY THAT WE'VE HEARD PRIOR TO THIS.

AND SECONDLY, HOW IT'S RELEVANT?

DEFENDANT STANSBURY: YOUR HONOR, RELATING TO RELEVANCY, MR. JOHNSTON HAS CLARIFIED THAT IN ADDITION TO BEING A POSSIBLE WITNESS, MR. YUSUF WAS ALSO A POSSIBLE SUSPECT.

HE HAS CLARIFIED THAT I WAS NOTHING MORE THAN A POSSIBLE WITNESS AND DEFINITELY NOT A SUSPECT.

IT WOULD APPEAR FROM MR. JOHNSTON'S STATEMENTS THAT MR. JOHNSTON ESCORTED MR. YUSUF TO A LOCALITY WHICH IS CERTAINLY NOT A SECURITY AREA.

AS I RECALL MR. JOHNSTON'S TESTIMONY YESTERDAY, HE DID SPECIFY HE HAD TO GO FIND SOME KEYS BECAUSE IN FACT IT WAS A LOCKED AREA AS NO ONE WAS THERE.

I, WHILE NOT BEING A SUSPECT FOR SOME REASON WAS CONDUCTED INTO A SECURITY AREA.

I CANNOT QUITE UNDERSTAND THE DIFFERENTIATION THERE AS TO WHY A POSSIBLE WITNESS IS PLACED IN A SECURITY AREA FOR QUESTIONING; WHEREAS A POSSIBLE SUSPECT IS PLACED INTO A NON-SECURITY AREA.

I AM ATTEMPTING TO ESTABLISH THE PURPOSE OF THIS, WHY THIS WAS DONE. IS IT NORMAL, ET CETERA.

I THINK IT IS HIGHLY RELEVANT SINCE WE ARE DEALING WITH A PROBLEM OF A MIRANDA MOTION.

I WAS IN A CUSTODY AREA WHICH HAS ALREADY [2261] BEEN SPECIFIED.

IT WAS SPECIFIED THAT IT IS APPROXIMATELY EIGHT FEET FROM THE BOOKING DESK.

I THINK THAT'S IN RATHER CLOSE PROXIMITY, AND YET FROM THE ASSUMPTION THAT IT APPEARS THAT IT IS BEING OFFERED IN THIS MATTER, IT IS SUPPOSED TO HAVE BEEN ASSUMED THAT I COULD NOT HAVE POSSIBLY ASSUMED THAT I WAS IN CUSTODY IN ANY WAY WHATSOEVER WHILE I'M BEHIND LOCKED DOORS AND HAVE NO ABILITY TO REMOVE MYSELF FROM THAT AREA SINCE I HAD NO KEYS TO ANY OF THE DOORS WHICH –

THE COURT: WAIT A MINUTE, MR. STANSBURY.

RIGHT NOW, YOU'RE TESTIFYING.

DEFENDANT STANSBURY: NO, SIR. I JUST STARTED TO SPECIFY, WHICH HAS BEEN SPECIFIED TO BY MR. JOHNSTON.

THE COURT: MR. STANSBURY, AS I UNDERSTAND THE EVIDENCE, YOU'RE INDICATING THAT YOU DID NOT HAVE THE ABILITY TO LEAVE?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: BUT THAT THE TESTIMONY OF OFFICER JOHNSTON AT THIS POINT, AS I UNDERSTAND IT WAS THAT AT ANY TIME YOU WANTED TO LEAVE, YOU COULD HAVE LEFT HAD YOU ASKED TO LEAVE OR INDICATED YOU WANTED TO LEAVE AND DID NOT WANT TO BE QUESTIONED ANYMORE UP UNTIL THE TIME THEY BOOKED YOU.

IF I MISUNDERSTOOD THAT TESTIMONY YOU MAY WANT TO INQUIRE.

BUT I UNDERSTAND THAT THAT WAS THE TESTIMONY. HIS TESTIMONY THUS FAR.

[2262] DEFENDANT STANSBURY: THEN I WOULD INQUIRE. I SPECIFICALLY REMEMBER GOING FURTHER IN THAT AREA AND ASKING MR. JOHNSTON IF I COULD HAVE LEFT WITHOUT SOMEONE UNLOCKING VARIOUS DOORS FOR ME TO BE ABLE TO LEAVE.

THE COURT: I UNDERSTAND THAT.

THERE'S A DIFFERENCE BETWEEN HAVING TO HAVE SOMEBODY OPEN A DOOR AND WHETHER THEY WOULD OPEN THE DOOR OR NOT.

AND THE TESTIMONY THAT WE HAVE THUS FAR IS THAT OFFICER JOHNSTON SAID THAT YOU WERE FREE TO LEAVE ANY TIME YOU WANTED TO. BUT THAT THE DOOR WAS LOCKED. AND HE HAD A KEY.

AND I DON'T RECALL HIM TESTIFYING OR ANYBODY ASKING WHETHER YOU ASKED TO LEAVE.

NOW, I'M GOING TO SUSTAIN THE OBJECTION TO THAT QUESTION MR. BURNS HAS MADE.

AND IF YOU WISH TO INQUIRE INTO THIS AREA THAT I HAVE JUST MADE REFERENCE TO, IF YOU UNDERSTAND HIS TESTIMONY TO BE DIFFERENT THAN WHAT I HEARD, YOU MAY INQUIRE ALONG THESE LINES.

BY DEFENDANT STANSBURY:

Q. LIEUTENANT JOHNSTON, DID I TO YOUR KNOWLEDGE HAVE ANY KEYS SO THAT I COULD HAVE OPENED THE DOORS MYSELF?

A. MR. STANSBURY, YOU AND I WERE IN THE SAME POSITION IN THAT FACILITY.

I COULD NOT HAVE LEFT THAT FACILITY WITHOUT SOMEBODY OPENING A DOOR FOR ME.

[2263] Q. SIR, YOU WOULD HAVE HAD TO HAVE APPROACHED SOMEONE TO HAVE THE DOORS OPENED?

A. EXACTLY.

Q. AND I WOULD HAVE HAD TO HAVE DONE THE SAME THING?

A. I WOULD HAVE DONE IT ON YOUR BEHALF.

Q. BUT AT NO TIME DID I ASK IN ANYWAY TO BE PERMITTED TO LEAVE TO OBTAIN SOME CIGARETTES?

A. THAT IS CORRECT.

Q. COULD MR. YUSUF HAVE WALKED OUT WITHOUT HAVING TO ASK ANYONE TO OPEN ANY DOORS FOR HIM?

MR. BURNS: YOUR HONOR, AT THIS POINT, I'LL OBJECT, AGAIN ON THE GROUNDS OF ASKED AND ANSWERED, THIS AREA CONCERNING THE RELATIONSHIP BETWEEN –

THE COURT: OVERRULED.

YOU MAY ANSWER THAT QUESTION, OFFICER.

THE WITNESS: YES.

BY DEFENDANT STANSBURY:

Q. SO THEREFORE, THERE WAS SOMEWHAT OF A DIFFERENCE IN SOME WAY THERE, AT LEAST RELATING TO MR. YUSUF AND MYSELF?

MR. BURNS: YOUR HONOR, I'LL OBJECT.

I DON'T KNOW THAT THAT'S A QUESTION.

THE COURT: I DON'T UNDERSTAND THAT QUESTION, MR. STANSBURY.

SUSTAINED.

BY DEFENDANT STANSBURY:

Q. WAS THERE SOME DIFFERENCES IN THAT REGARD [2264] RELATING TO MR. YUSUF AND MYSELF BEING ABLE TO LEAVE?

A. YOU MEAN RELATIVE TO THE –

MR. BURNS: YOUR HONOR, I'LL OBJECT.

IF THE WITNESS DOESN'T UNDERSTAND THE QUESTION, HE DOESN'T UNDERSTAND THE QUESTION.

THE COURT: DO YOU UNDERSTAND THE QUESTION?

THE WITNESS: IN REFERENCE TO THE BUILDING SECURITY?

THE COURT: YOU HAD BETTER CLARIFY IT, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. IN REFERENCE TO THE BUILDING SECURITY, I BELIEVE YOU TESTIFIED EARLIER THAT YOU HAD OBTAINED THE KEYS FOR THE UPSTAIRS AREA?

A. NO.

Q. YOU DID NOT. HAD SOMEONE ELSE DONE SO?

A. YES.

Q. AND THEY HAD UNLOCKED THOSE DOORS?

A. THE DOOR TO THE INTERVIEW ROOM WAS THE ONLY DOOR THAT I CAN RECALL REQUIRED UNLOCKING.

Q. WOULD THAT HAVE BEEN THE DOOR LEADING DIRECTLY INTO THE DETECTIVE OFFICES AREA?

I BELIEVE YOU SPECIFIED IT WAS A DETECTIVE BUREAU AREA OR SOMETHING OF THAT NATURE?

A. THE INTERVIEW ROOM WAS ADJACENT TO THE DETECTIVE BUREAU.

I DIDN'T TESTIFY THAT IT WAS IN THE DETECTIVE BUREAU.

[2265] Q. COULD YOU CLARIFY ADJACENT THEN?

A. THE DOOR THAT WE ACCESSED, TO THE BEST OF MY RECOLLECTION, WAS IN A CORRIDOR UPSTAIRS.

AS FAR AS I KNOW, THE ADJACENT ROOMS OFF THAT CORRIDOR COMPRISE THE DETECTIVE BUREAU OF THE POMONA POLICE DEPARTMENT.

Q. IN THE ROOM WHICH YOU ENTERED FOR THE PURPOSE OF QUESTIONING MR. YUSUF, WERE THERE SMALL CUBICLES ALONG THE WALL ON ONE SIDE OF THE OTHER OR ANYTHING LIKE THAT WITHIN THAT ROOM?

A. NO.

Q. DID YOU SEE ANY OPENINGS OR DOORWAYS ON ANY SIDES OF THE WALL WITHIN THAT ROOM?

A. MR. STANSBURY, THAT ROOM WAS AN INTERVIEW ROOM.

IT HAD THE DOOR SO YOU COULD GET INTO THAT ROOM.

IT WAS NO BIGGER THAN AN INTERVIEW ROOM.

IT WAS NOT A ROOM WITH ADJACENT ROOMS OFF OF IT WITH SMALLER CUBICLES WITHIN IT.

IT WAS AN INTERVIEW ROOM.

Q. PERHAPS I'M LABORING UNDER A MISCOMPREHENSION, MR. JOHNSTON, BECAUSE

APPROXIMATELY TEN YEARS AGO I WAS CONVICTED OF –

THE COURT: JUST ASK THE QUESTION, MR. STANSBURY. IF YOU HAVE A QUESTION.

BY DEFENDANT STANSBURY:

Q. POSSIBLY MY MEMORY IS VERY VAGUE IN THAT, MR. [2266] JOHNSTON.

ARE YOU SAYING THAT THE INTERVIEW ROOMS ARE ALL ALONG THE CORRIDOR WITHIN THAT AREA?

MR. BURNS: YOUR HONOR, I'LL OBJECT AS IRRELEVANT AT THIS POINT IN TIME AND – JUST IRRELEVANT.

THE COURT: OVERRULED.

THE WITNESS: I CAN ONLY ADDRESS MY RECOLLECTION OF ONE INTERVIEW ROOM IN THAT FACILITY THAT I WAS EXPOSED TO FOR APPROXIMATELY 5 TO 10 MINUTES TWO YEARS AGO.

OTHER INTERVIEW ROOMS, OR WHAT OTHER REFERENCES YOU'RE MAKING I HAVE NO KNOWLEDGE OF.

Q. WAS THAT INTERVIEW ROOM THAT YOU ARE SPEAKING OF A ROOM WITHIN A LARGER ROOM?

A. NO.

Q. BUT THERE WAS A LOCKED DOOR ON THAT ROOM?

A. AS I RECALL.

Q. UPON UNLOCKING THAT DOOR AND ALLOWING MR. YUSUF AND WHOEVER ELSE WENT IN FOR THE PURPOSE OF INTERVIEWING HIM, DID YOU RELOCK THAT DOOR AFTER MR. YUSUF WENT IN?

A. I DID NOT HAVE A KEY TO THAT DOOR.

Q. DID ANYONE ELSE RELOCK THAT DOOR THAT YOU RECALL?

A. THE PERIOD OF TIME I WAS PRESENT AT THAT INTERVIEW ROOM WITH MR. YUSUF THAT DOOR WAS OPEN.

Q. WOULD YOU HAVE BEEN – WERE YOU ABLE TO ENTER INTO THE FRONT DOOR OF THE POLICE BUILDING OR OFFICE DOWNSTAIRS AT THE DESK WITHOUT ANY KEY?

[2267] A. NO.

Q. SOMEONE HAD TO COME IN AND LET YOU IN, OR YOU KNOCKED ON THE DOOR OR WHAT?

A. YOU CAN ENTER THE LOBBY AREA, THE PUBLIC LOBBY AREA?

Q. RIGHT.

A. ANY MOVEMENT FURTHER INTO THE BUILDING REQUIRED PASSAGE BY SOME MEANS THROUGH SOME TYPE OF SECURITY DOOR.

Q. TO WHICH YOU OR SOME OF THE PEOPLE WITH YOU HAD OBTAINED THE KEYS?

A. NO.

Q. WOULD YOU SPECIFY THAT IT WAS UPSTAIRS.

COULD YOU PLEASE EXPLAIN FOR US HOW YOU MANAGED TO GET FROM THE LOBBY AREA DOWNSTAIRS DOWN TO THE INTERROGATION ROOM UPSTAIRS?

A. TO THE BEST OF MY RECOLLECTION THERE IS A STAIRWAY. OBVIOUSLY, THERE HAS TO BE.

THERE IS ONE PUBLIC STAIRWAY OFF THE LOBBY. AND THERE IS, I RECALL ANOTHER STAIRWAY WITHIN THE SECURITY AREA OF THE BUILDING.

WHICH STAIRWAY WE USED, I DON'T RECALL.

IN FACT, THERE MAY EVEN BE AN ELEVATOR IN THAT BUILDING.

HOW WE GOT TO THE SECOND FLOOR, WE WERE LED, AND I DIDN'T NECESSARILY RECORD THE DIRECTION.

Q. I CAN UNDERSTAND THAT.

WOULD YOU HAVE RECALLED ANYONE USING ANY KEYS [2268] WHILE –

A. A POMONA POLICE OFFICER HAD TO OPEN AT LEAST THE INTERVIEW ROOM DOOR.

AND WHETHER OR NOT WE ENTERED THROUGH THE BUILDING ITSELF FROM THE LOBBY AREA BY SOMEBODY OPENING A DOOR FOR US,

HITTING AN ELECTRIC DOOR RELEASE OR EXACTLY WHAT, I DO NOT RECALL.

Q. AND YOU DO NOT RECALL WHETHER YOU USED THE OTHER STAIRWAY OR THE PUBLIC STAIRWAY?

A. THAT'S CORRECT.

Q. DO YOU RECALL THAT PARTICULAR OFFICER WHO LED YOU?

A. NO.

Q. WOULD YOU HAVE ANY WAY OF BEING ABLE TO FIND OUT WHO THAT OFFICER WAS?

A. NO.

Q. DO YOU THINK THAT THERE MIGHT BE SOME TYPE OF A LOGBOOK WHICH MAY REGISTER THE NAME OF THAT OFFICER WHO WAS ON DUTY IN THAT LOCALITY AT THAT TIME?

MR. BURNS: OBJECT, ON DOUBLE LAYER SPECULATION. "DO YOU THINK THERE MIGHT BE?"

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. BUT YOU DO RECALL THAT THE AREA I WAS INTERVIEWED IN WAS DEFINITELY A SECURITY AREA?

A. YES, SIR.

Q. WAS THERE ANY UNUSUAL CIRCUMSTANCES THERE THAT CAUSED YOU TO REMEMBER THAT ONE THING AND NOT THE [2269] OTHER?

THE COURT: WHAT OTHER? I DON'T UNDERSTAND YOUR QUESTION.

DEFENDANT STANSBURY: OF MR. YUSUF'S INTERVIEW –

THE COURT: ASK IT AGAIN.

BY DEFENDANT STANSBURY:

Q. WOULD THERE BE ANYTHING IN RELATION TO THE INTERVIEW OF MYSELF WHICH CAUSED YOU TO REMEMBER THE INTERVIEW OF MYSELF MORE ACCURATELY THAN THAT OF THE INTERVIEW OF MR. YUSUF?

MR. BURNS: OBJECTION, YOUR HONOR.

THERE HAS BEEN NO INDICATION THAT THIS OFFICER WAS PRESENT DURING THE INTERVIEW OF MR. YUSUF NOR THAT HE HAD ANY RECOLLECTION AS TO THE INTERVIEW OF MR. YUSUF TO COMPARE IT TO THE ACTUAL INTERVIEW WITH MR. STANSBURY.

THERE HAS BEEN NO INDICATION THAT HE HAS NO DIFFERENT RECOLLECTION ON IT.

THE COURT: SUSTAINED.

IT ASSUMES FACTS THAT ARE NOT IN EVIDENCE. IF YOU WISH TO INQUIRE, YOU MAY.

BY DEFENDANT STANSBURY:

Q. DETECTIVE JOHNSON, DID YOU EARLIER SPECIFY THAT YOU HAD BEEN PRESENT DURING THE BEGINNING OF THE INTERVIEW OF MR. YUSUF?

A. DURING OR –

Q. DURING THE BEGINNING OF THE INTERVIEW?

A. YES.

[2270] Q. SO YOU HAD GONE THERE WITH MR. YUSUF DURING THAT PORTION OF THE TIME?

A. YES.

Q. AND YOU HAD FOLLOWED PRESUMABLY THE SAME ROUTE MR. YUSUF CONDUCTED?

A. CERTAINLY.

Q. WERE YOU PRESENT WHEN I WAS BROUGHT THROUGH THE STATION, MR. JOHNSTON?

A. I WAS PRESENT IN THAT I WAS IN THE SAME BUILDING YOU WERE BROUGHT INTO.

Q. BUT YOU DID NOT ACTUALLY SEE ME BROUGHT IN?

A. THAT IS CORRECT.

Q. THEREFORE, YOU ARE, I PRESUME SAYING THAT YOU HAVE NO KNOWLEDGE OF THE ROUTE THAT I WAS TAKING?

A. ONLY AS IT WAS RELATED TO ME BY THE BALDWIN PARK OFFICERS.

Q. DID BALDWIN PARK OFFICERS TELL YOU SPECIFICALLY WHAT ROUTE THEY BROUGHT ME INTO THE BUILDINGS?

MR. BURNS: I'LL OBJECT AS HEARSAY.

THE COURT: OVERRULED.

THAT QUESTION CAN BE ANSWERED YES OR NO?

THE WITNESS: THEY INDICATED TO ME THAT THEY HAD BROUGHT YOU IN THROUGH THE BACK STAIRS, DOWNSTAIRS BACK DOOR, EXTERIOR DOOR IMMEDIATELY OFF OF THE INTERVIEW ROOM.

Q. HAD YOU BEEN IN OR OUT OF THAT DOOR YOURSELF?

A. MAYBE ONCE.

Q. COULD YOU RECALL ANYTHING ABOUT THAT SPECIFIC [2271] AREA AS TO WHAT IT LOOKED LIKE OR ANYTHING OF THAT NATURE?

A. NO.

Q. SINCE YOU WERE PRESENT DURING AT LEAST THE BEGINNING OF THE INTERVIEW WITH MR. YUSUF AND WERE NOT PRESENT DURING MY ARRIVAL BUT SHORTLY, WERE THERE – SHORTLY THEREAFTER, WAS THERE ANYTHING WITHIN THAT PARTICULAR TIME SPAN THAT CAUSED YOU TO RECALL THE INTERVIEW WITH ME MORE SPECIFICALLY THAN MR. YUSUF AS FAR AS SECURITY AREAS AND SO FORTH?

MR. BURNS: OBJECTION, YOUR HONOR. I DON'T UNDERSTAND WHAT THE QUESTION MEANS.

DEFENDANT STANSBURY: I'LL WITH WITHDRAW THE QUESTION, YOUR HONOR.

THE COURT: YOU MAY.

BY DEFENDANT STANSBURY:

Q. BUT YOU WERE AWARE THAT I WAS BEING INTERVIEWED IN A SECURITY AREA?

A. OF COURSE.

Q. WHY WAS I NOT TAKEN UPSTAIRS TO A NON SECURITY AREA SINCE I WAS ONLY A POSSIBLE WITNESS?

MR. BURNS: OBJECTION, YOUR HONOR.

IRRELEVANT AT THIS POINT IN TIME.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT IF YOU KNOW?

THE WITNESS: BALDWIN PARK SELECTED TO BRING YOU INTO THAT AREA OF THE FACILITY FOR WHATEVER REASON THEY DEEMED APPROPRIATE.

THE COURT: DO YOU HAVE ANY VOICE IN THAT DECISION?

[2272] THE WITNESS: NO, SIR.

BY DEFENDANT STANSBURY:

Q. I BELIEVE YOU WERE ESCORTED AROUND BY DETECTIVE BELL AS FAR AS DRIVING AND SO FORTH?

A. SHE TRANSPORTED US TO POMONA TO THE YUSUF RESIDENCE AND THEN TO THE POMONA POLICE DEPARTMENT, YES.

Q. DURING THAT TIME UPON ARRIVING WITH MR. YUSUF AT THE INTERROGATION ROOM, HAD YOU SO DESIRED, HAD ACCESS TO A TELEPHONE?

MR. BURNS: OBJECTION, YOUR HONOR, ON GROUNDS OF RELEVANCE. I OBJECT ON GROUNDS OF RELEVANCE.

THE COURT: HOW IS THAT RELEVANT?

DEFENDANT STANSBURY: I'M ATTEMPTING TO SHOW, YOUR HONOR, THAT MR. JOHNSTON COULD HAVE VERY CONCEIVELY [sic], HAD HE CHOSEN TO DO SO, GOTTEN IN CONTACT WITH THE BALDWIN PARK POLICE OFFICERS IN QUESTION TO GIVE THEM SPECIFIC DIRECTIONS ON WHERE THEY COULD HAVE BROUGHT ME.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU HAVE ANY MEANS OF CONTACT WITH THE OFFICERS IN QUESTION?

MR. BURNS: OBJECTION, YOUR HONOR.

AGAIN, IRRELEVANT.

THE COURT: I'M SORRY. DID I UNDERSTAND THE QUESTION?

YOU SAY THE OFFICERS IN QUESTION. I DON'T KNOW WHO YOU WERE TALKING ABOUT.

DEFENDANT STANSBURY: VERY WELL.

[2273] Q. DID YOU HAVE ANY SPECIFIC CONTACT WITH POLICE OFFICERS, JOSEPH LEE, POLICE

OFFICER HIGGENBOTHAM, POLICE OFFICER GRAY, POLICE OFFICER MULCAHY –

THE COURT: NOW, ARE YOU ASKING THAT QUESTION BEFORE YOU WERE TAKEN TO THE STATION, AFTER YOU WERE TAKEN TO THE STATION, ON THAT SAME DAY, THE DAY BEFORE, THE DAY AFTER?

WHAT IS YOUR TIME FRAME?

DEFENDANT STANSBURY: SEPTEMBER THE 29TH, OF 1982, YOUR HONOR, SOMETIME IN THE NEIGHBORHOOD OF 10, OR CALL IT 9:00 P.M. TO 11:00 P.M.

[2274] THE COURT: NOW, DO YOU UNDERSTAND THAT QUESTION?

THE WITNESS: NO, SIR.

THE COURT: ASK ANOTHER QUESTION.

BY DEFENDANT STANSBURY:

Q. DURING THE TIME FRAME OF 9:00 P.M. TO 11:00 P.M. ON SEPTEMBER THE 29TH OF 1982, WERE YOU IN CONTACT WITH ANY OF THOSE FOUR SPECIFIC OFFICERS?

A. YES.

Q. SO YOU DID HAVE CONTACT WITH THEM ON THAT DAY.

COULD YOU EXPLAIN HOW?

A. CERTAINLY, IN THE NEIGHBORHOOD OF 9:30 OR 10 O'CLOCK WE WERE AT THE SAME LOCATION

IN POMONA ON DUDLEY, I BELIEVE, IN THE PRESENCE OF THOSE PEOPLE.

Q. DID YOU HAVE ANY MEANS OF CONTACTING THEM AFTER LEAVING THEM AT THAT LOCATION?

MR. BURNS: OBJECTION, YOUR HONOR, IRRELEVANT WHETHER HE HAD A MEANS OF COMMUNICATION OR NOT.

THE COURT: WHY DON'T YOU ASK IF HE DID COMMUNICATE.

BY DEFENDANT STANSBURY:

Q. DID YOU COMMUNICATE WITH HIM AFTER THAT?

A. NO.

Q. WOULD YOU HAVE BEEN ABLE TO DO SO IF YOU SO DESIRED?

MR. BURNS: OBJECTION, IRRELEVANT.

THE COURT: SUSTAINED.

[2275] BY DEFENDANT STANSBURY:

Q. HOW LONG WAS IT AFTER YOU HAD STARTED THE INTERVIEW WITH MR. YUSUF BEFORE YOU WERE NOTIFIED THAT I HAD BEEN BROUGHT IN?

MR. BURNS: OBJECTION, ASKED AND ANSWERED.

HE'S ALREADY INDICATED HOW LONG HE WAS WITH MR. YUSUF BEFORE HE LEFT.

THE COURT: EXCUSE ME.

WOULD YOU READ THE QUESTION BACK. I DIDN'T HEAR ALL THE QUESTION.

(LAST QUESTION WAS READ BACK.)

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: TWO MINUTES.

BY DEFENDANT STANSBURY:

Q. SINCE YOU WERE ALREADY WITHIN THAT AREA, WOULD IT HAVE NOT BEEN MORE EXPEDIENT TO SIMPLY HAVE ME BROUGHT UPSTAIRS?

MR. BURNS: OBJECTION, IRRELEVANT.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. WHAT DID YOU DO UPON BEING INFORMED THAT I WAS THERE?

MR. BURNS: YOUR HONOR, I'LL OBJECT AGAIN.

THIS HAS BEEN ASKED BY MR. DAUGHERTY AND I BELIEVE BY MR. STANSBURY; CERTAINLY BY MR. DAUGHERTY.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: WHY THEN COULD THE COURT [2276] REPORTER TELL ME WHAT THE ANSWER WAS SINCE I DON'T RECALL WHAT THE ANSWER WAS.

MR. BURNS: YOUR HONOR, I DON'T BELIEVE THAT'S THE FUNCTION OF THE COURT REPORTER. THE TESTIMONY IS ON THE RECORD.

THE COURT: READ THAT QUESTION BACK TO ME, WOULD YOU, HIS QUESTION.

(THE LAST QUESTION WAS READ BACK.)

THE COURT: I'M GOING TO REVERSE, IN ORDER TO EXPEDITE.

YOU MAY ANSWER THAT QUESTION.

THE WITNESS: CAME DOWNSTAIRS.

BY DEFENDANT STANSBURY:

Q. DID YOU COME DOWNSTAIRS, DETECTIVE JOHNSTON FOR THE PURPOSE OF INTERVIEWING ME PERSONALLY?

A. FOR ME TO PERSONALLY INTERVIEW YOU?

Q. YES?

A. YES.

Q. AND YET AT THAT TIME, IF I UNDERSTAND YOU CORRECTLY, MR. YUSUF WAS THE ONLY ONE WHO HAD ANY RELATION OF A POSSIBILITY OF BEING A SUSPECT AT THAT TIME BETWEEN HIMSELF AND MYSELF?

MR. BURNS: YOUR HONOR, I'LL OBJECT.

IT'S ASKED AND ANSWERED. WE'VE GONE INTO THIS AREA I DON'T KNOW HOW MANY TIMES. I DON'T SEE THE RELEVANCY.

THE COURT: IT'S ARGUMENTATIVE.

MR. BURNS: IT'S ARGUMENTATIVE, YES.

[2277] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU CLARIFY THAT MR. YUSUF WAS A POSSIBLE SUSPECT AND THAT I WAS NOT.

COULD YOU EXPLAIN WHY YOU CHOSE TO PERSONALLY CONDUCT AN INTERVIEW WITH ME RATHER THAN MR. YUSUF WHERE YOU WERE ALREADY LOCATED?

MR. BURNS: OBJECTION, YOUR HONOR, ARGUMENTATIVE.

IT'S IRRELEVANT.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: I SAID THAT YOU WERE NOT A SUSPECT, MR. STANSBURY. BUT I DIDN'T EXCLUDE YOU FROM BEING A POSSIBLE SUSPECT.

ANYBODY THAT WAS PRESENT IN BALDWIN PARK AT THE TIME IN QUESTION WAS A POSSIBLE WITNESS AS WELL AS A POSSIBLE SUSPECT.

DEFENDANT STANSBURY: I UNDERSTAND THAT, MR. JOHNSTON.

BY DEFENDANT STANSBURY:

Q. WHO WAS IN CHARGE OF THE CASE AT THAT TIME IN THAT PARTICULAR AREA?

A. WELL, I MAY RECEIVE SOME ARGUMENT FROM SERGEANT PATTERSON HE WAS THE SAME RANK THAT I WAS, BUT I FELT I WAS THE LEAD INVESTIGATOR.

Q. YOU DID FEEL YOU WERE THE LEAD INVESTIGATOR, SO THEREFORE IT WAS YOUR PREROGATIVE ON WHO YOU CHOSE TO INTERVIEW, ET CETERA?

[2278] MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT ON THE GROUNDS OF RELEVANCE, UNLESS THERE WAS SOME CLEAR UNDERSTANDING, I DON'T UNDERSTAND WHAT IMPORTANCE THIS HAS.

THE OFFICER ALREADY INDICATED THERE WERE TWO OFFICERS OF THE SAME RANK ON THE SAME ASSIGNMENT.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. WAS THERE ANY DISCUSSION BETWEEN YOURSELF AND DETECTIVE PATTERSON AS TO WHO WOULD INTERVIEW WHO?

MR. BURNS: OBJECTION, ON THE GROUND OF RELEVANCY AND ALSO ON HEARSAY.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: YOUR HONOR, I WOULD OBJECT BECAUSE OF THE FACT THAT I FEEL –

THE COURT: I'VE ALREADY RULED. THE RECORD'S CLEAR.

I SUSTAINED IT. GO ON TO YOUR NEXT QUESTION.

BY DEFENDANT STANSBURY:

Q. WERE THERE ANY SPECIAL REASONS OR ORDERS FROM YOU FOR SERGEANT HIGGENBOTHAM TO AWAIT YOUR ARRIVAL BEFORE CONTACTING MR. YUSUF?

MR. BURNS: OBJECTION, YOUR HONOR, HEARSAY AND IRRELEVANT.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: SERGEANT HIGGENBOTHAM I DON'T BELIEVE WAS RESTRAINED BY ME FROM SPEAKING TO YUSUF.

[2279] HOWEVER, HE MAY HAVE ASSUMED THAT BECAUSE I ADVISED HIM THAT WE WANTED TO TALK TO MR. YUSUF –

MR. BURNS: OBJECTION, MOTION TO STRIKE THIS WITNESS' RESPONSE AS TO WHAT MR. HIGGENBOTHAM MAY OR MAY NOT HAVE ASSUMED IS SPECULATION.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. ARE YOU SAYING THERE WAS ROOM WITHIN YOUR INSTRUCTIONS FOR SPECULATION OR ASSUMPTION ON THE PART OF SERGEANT HIGGENBOTHAM?

MR. BURNS: YOUR HONOR, ON THE GROUNDS OF RELEVANCY AND BEYOND THE SCOPE OF THIS PERSON'S KNOWLEDGE AS TO WHAT HE MAY OR MAY NOT HAVE SPECULATED.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. UPON THE ARRIVAL OF THE LOCATION OF MR. YUSUF, DID YOU HAVE ANY CONVERSATION WITH THE OTHER OFFICERS OR INVESTIGATORS ALREADY THERE?

MR. BURNS: YOUR HONOR, THAT ANSWER – QUESTION CAN BE ANSWERED YES OR NO.

THE COURT: IF YOU WOULD, OFFICER, IF YOU UNDERSTAND THE QUESTION.

THE WITNESS: YES, I HAD DISCUSSION WITH HIM.

BY DEFENDANT STANSBURY:

Q. COULD YOU CLARIFY FOR US WHO THAT DISCUSSION WAS WITH?

MR. BURNS: I'M SORRY, YOUR HONOR.

WAS THAT QUESTION: WHO IT WAS WITH?

[2280] THE COURT: YES.

THE WITNESS: I HAD A DISCUSSION WITH SERGEANT HIGGENBOTHAM AND A DISCUSSION WITH DETECTIVE LEE.

BY DEFENDANT STANSBURY:

Q. BUT YOU DON'T RECALL WHERE SERGEANT HIGGENBOTHAM WAS ACTUALLY AT THAT TIME?

A. AT THE TIME OF THE DISCUSSION, I DO.

Q. WHERE WAS HE AT, AT THAT TIME?

A. ON A STREET INTERSECTING THE STREET THAT THE APARTMENT BUILDING IN QUESTION WAS LOCATED.

Q. WHICH WOULD HAVE BEEN APPROXIMATELY HOW FAR FROM WHERE MR. YUSUF'S APARTMENT DOOR WAS LOCATED?

A. IT WOULD BE DIFFICULT FOR ME TO RECALL DISTANCES AT THIS TIME.

Q. COULD YOU GIVE US AN APPROXIMATION?

MR. BURNS: YOUR HONOR, I'LL OBJECT ON THE GROUNDS OF RELEVANCY TO THE MIRANDA MOTION, WHERE THEIR CONVERSATION WITH MR. HIGGENBOTHAM WAS IN RELATIONSHIP TO HOW FAR IT IS TO THE FRONT DOOR OF MR. YUSUF'S APARTMENT, I DON'T SEE WHAT RELEVANCE AT ALL THAT HAS TO THIS MOTION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DURING THE CONVERSATION WITH MR. HIGGENBOTHAN AND JOSEPH LEE, COULD YOU PLEASE CLARIFY WHAT THAT CONVERSATION WAS?

MR. BURNS: OBJECTION, CALLS FOR HEARSAY, AS TO RELEVANCE.

THE COURT: SUSTAINED.

[2281] BY DEFENDANT STANSBURY:

Q. COULD YOU SPECIFY WHAT YOU STATED TO SERGEANT HIGGENBOTHAM AND JOSEPH LEE AT THAT TIME?

MR. BURNS: OBJECTION, SAME GROUNDS, HEARSAY AND IRRELEVANT.

THE COURT: OVERRULED. YOU MAY ANSWER THAT, OFFICER.

THE WITNESS: YOU'RE ASKING WHAT I SAID TO SERGEANT HIGGENBOTHAM AND DETECTIVE LEE.

BOTH OF THOSE PERSONS WERE NOT PRESENT ON THAT CONVERSATION WITH SERGEANT HIGGENBOTHAM.

BY DEFENDANT STANSBURY:

Q. WELL, THEN COULD YOU PLEASE EXPLAIN TO US WHAT YOU SAID TO EACH OF THEM ON THE SEPARATE TIMES EACH OF THEM WAS PRESENT IN FRONT OF YOU?

MR. BURNS: YOUR HONOR, I'LL OBJECT ON THE GROUNDS OF RELEVANCY. WHAT CONVERSATION WHEN THEY ARRIVED AT A LOCATION OUTSIDE OF YUSUF'S APARTMENT HAS ABSOLUTELY NO RELEVANCY TO THIS CASE, ABSENT THE DEFENDANT OFFERING SOME OFFER OF PROOF AS TO RELEVANCY.

I THINK HE'S CLEARLY GOING ON A FISHING EXPEDITION AT THIS POINT.

HE DOESN'T EVEN KNOW WHAT RELEVANCY HE CAN HAVE TO THIS THING.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT, IF YOU RECALL.

THE WITNESS: I ASKED SERGEANT HIGGENBOTHAM WHERE YUSUF'S APARTMENT WAS RELATIVE TO WHERE WE WERE.

[2282] AND HE INDICATED AN APARTMENT BUILDING COMPLEX AND ADVISED ME HE DIDN'T KNOW WHERE WITHIN THAT PARTICULAR COMPLEX MR. YUSUF'S PARTICULAR APARTMENT WAS.

SHOULD I GO ON?

BY DEFENDANT STANSBURY:

Q. YOUR DISCUSSION WITH MR. LEE?

A. UPON ENTERING THE APARTMENT COMPLEX, I WAS ADVISED BY MR. LEE AND DIRECTED BY HIM TO MR. YUSUF'S APARTMENT.

Q. DID YOU THEN OR LATER GIVE OTHER INSTRUCTIONS TO MR. HIGGENBOTHAM OR MR. LEE RELATING TO ME?

A. YES.

Q. COULD YOU TELL US WHAT THOSE INSTRUCTIONS WERE?

MR. BURNS: YOUR HONOR, I'LL OBJECT AT THIS POINT. BECAUSE THIS HAS BEEN ASKED AND

ANSWERED BY MR. DAUGHERTY EXTENSIVELY AS TO WHAT INSTRUCTIONS HE ASKED OF THIS WITNESS, ALSO BEEN ASKED OF OFFICER HIGGENBOTHAM.

WE'RE GOING INTO THE SAME AREAS REPEATEDLY FOR NO REASONABLE GOOD REASON.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I REQUESTED THAT SERGEANT HIGGENBOTHAM GO TO AN ADDRESS ON MISSION BOULEVARD, ASCERTAIN IF MR. ROBERT STANSBURY WAS PRESENT AT THAT LOCATION AND IF HE WAS TO ASK MR. STANSBURY IF HE WOULD MIND RESPONDING TO THE POMONA POLICE DEPARTMENT IN ORDER THAT WE MIGHT CONDUCT AN INTERVIEW WITH HIM.

[2283] FURTHER, IF MR. STANSBURY DID NOT HAVE TRANSPORTATION, THAT THEY WERE TO TRANSPORT HIM.

BY DEFENDANT STANSBURY:

Q. WAS THERE ANY SPECIAL REASON FOR YOU TO GO WITH MR. YUSUF RATHER THAN COMING TO FIND ME?

MR. BURNS: OBJECTION ON THE GROUNDS OF RELEVANCE.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I FELT THEY WERE CAPABLE OF FOLLOWING THOSE DIRECTIONS.

BY DEFENDANT STANSBURY:

Q. DID YOU GIVE THEM ANY INSTRUCTIONS RELATING TO THEIR APPROACH OF THAT AREA?

A. NO.

Q. WHEN YOU ARRIVED AT MR. YUSUF'S LOCATION, WHAT DID YOU DO UPON YOUR ARRIVAL?

A. SPOKE TO SERGEANT HIGGENBOTHAM, ENTERED THE COMPLEX, SPOKE TO DETECTIVE LEE, WENT TO THE FRONT DOOR OF THE YUSUF APARTMENT.

Q. WERE YOU FAMILIAR WITH THAT AREA?

A. NO.

Q. HAD YOU EVER BEEN THERE BEFORE?

A. NO.

Q. YOU DID NOT AT ANYTIME REMOVE YOUR GUN FROM YOUR HOLSTER?

A. I DID NOT.

Q. DID ANY OF THE OTHER DETECTIVES PRESENT HAVE THEIR GUNS OUT?

[2284] A. NOT THAT I SAW.

Q. TO YOUR KNOWLEDGE, WERE ANY OF THEM KNOWLEDGEABLE OF THAT AREA?

MR. BURNS: OBJECTION, YOUR HONOR – WELL, TO HIS KNOWLEDGE.

THE WITNESS: I DON'T KNOW.

BY DEFENDANT STANSBURY:

Q. BUT YOU SAW NO ONE WITH THEIR GUNS DRAWN FROM THEIR HOLSTERS?

A. THAT'S CORRECT.

Q. WAS THERE ANY CONVERSATIONS THAT YOU WERE A DIRECT PARTY TO RELATING TO HOW TO APPROACH THE APARTMENT COMPLEX IN THE BUILDING IN WHICH MR. YUSUF WAS LOCATED?

A. I DON'T YOU UNDERSTAND THAT QUESTION.

Q. RELATING TO DEPLOYMENT OF THE OFFICERS INVOLVED?

A. NO.

Q. SO BASICALLY YOU JUST WALKED UP TO THE DOOR AND KNOCKED ON THE DOOR?

A. YES.

DEFENDANT STANSBURY: I DON'T HAVE ANY FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

MR. BURNS: NO FURTHER QUESTIONS.

THE COURT: THANK YOU, OFFICER.

YOU MAY STEP DOWN.

MR. BURNS: FOR THE RECORD, MAY THIS WITNESS BE EXCUSED ON THIS MOTION?

THE COURT: ANYTHING FURTHER OF THIS WITNESS, [2285] GENTLEMEN?

MR. DAUGHERTY: I DON'T BELIEVE MR. ROBUSTO WANTS TO RECALL HIM AGAIN.

SO WE WOULD EXCUSE HIM.

THE COURT: OFFICER JOHNSTON MAY BE EXCUSED ON THIS MOTION.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO CALL OFFICER GRAY TO THE STAND.

MR. DAUGHERTY: LET'S NOT CALL OFFICER GRAY RIGHT NOW.

CALL MILLER.

MR. DAUGHERTY:

DEFENDANT STANSBURY: BECAUSE OFFICER GRAY'S TESTIMONY COMES FIRST.

THE COURT: WE'LL TAKE A SHORT RECESS.

MR. DAUGHERTY: ANOTHER THING I WANTED TO INDICATE.

MR. STANSBURY HAS REQUESTED HE WANTED A PARTICULAR VIDEOTAPE RECORDING SHOWN TO THE COURT AS PART OF THIS MOTION.

AND PURSUANT TO HIS REQUEST, MR. BENART HAS BROUGHT THE TAPE AND WE HAVE RENTED THE EQUIPMENT TO SHOW IT TO THE COURT AND IT COSTS MONEY EACH DAY.

I WOULD LIKE TO DO IT THIS AFTERNOON IF POSSIBLE.

THE COURT: HOW LONG IS IT GOING TO TAKE TO SHOW THE TAPE, FIRST?

MR. DAUGHERTY: THERE'S ONLY ONE PORTION OF THE TAPE, ONE SMALL PORTION OF THE TAPE. THE ENTIRE TAPE IS [2286] 20 MINUTES. I BELIEVE THERE'S ONE PORTION OF IT HE WANTS THE COURT TO SEE.

MR. BURNS: YOUR HONOR, I DON'T KNOW WHAT THE RELEVANCE OF THE TAPE IS. UNTIL IT'S LAID I'LL PROBABLY HAVE SOME QUESTIONS ABOUT IT.

I DON'T KNOW WHAT THE TAPE HAS TO DO WITH ANYTHING.

THE COURT: ALL RIGHT, GENTLEMEN.

WHAT'S THE TAPE – DO YOU KNOW, GENTLEMEN WHAT THE TAPE IS?

MR. DAUGHERTY: YES, I BELIEVE IT'S – THE – THAT WHICH HE IS SPECIFICALLY INTERESTED IN THE COURT SEEING IS A TAPE RECORDING OF DEPUTY WILLIE MILLER MAKING THE STATEMENT ON TELEVISION TO THE GENERAL PUBLIC REGARDING THIS CASE.

MR. BURNS: YOUR HONOR –

MR. DAUGHERTY: THAT STATEMENT ITSELF IS A VERY BRIEF STATEMENT BUT IT'S CONTAINED ON A 20 MINUTE TAPE.

WILLIE MILLER IS ALSO A WITNESSES HERE THAT MR. STANSBURY WISHES TO CALL.

THE COURT: YOU WANT TO SHOW THE TAPE BEFORE OR AFTER?

MR. DAUGHERTY: I JUST WOULD LIKE TO BE ABLE TO RETURN THE TAPERECORDER TONIGHT AND SAVE ANOTHER DAY'S EXPENSE.

THE COURT: FINE.

DO YOU HAVE THE EQUIPMENT TO SET UP TO SEE IT BEFORE WE RULE ON IT?

[2287] MR. BURNS: YOUR HONOR, I WOULD INDICATE FOR THE RECORD BASED ON MY CONVERSATION WITH WILLIE MILLER I DON'T THINK SHE HAS ANYTHING RELEVANT OR ADMISSIBLE TO TESTIFY TO ON THIS MOTION.

IF THAT IS TRUE, THEN CERTAINLY ANY TAPE OF HER PRIOR STATEMENTS WOULD BE ALSO OBJECTIONABLE TO AS IRRELEVANT.

THE COURT: WELL –

MR. BURNS: WE'RE TALKING IN THE DARK AT THIS POINT. I'M NOT AWARE OF ANY RELEVANCE AT THIS POINT.

THE COURT: I CAN SEE HOW THE TAPE MIGHT BE RELEVANT.

MR. BURNS: DEPENDING ON WHAT SHE SAID.

THE COURT: AND SO I'M GOING TO WATCH THAT PORTION OF THE TAPE THAT HE WANTS ME TO SEE.

MR. BURNS: I WOULD SUGGEST WE HAVE HER TESTIMONY FIRST SO THAT WE CAN MAKE A DETERMINATION AS TO WHETHER IT'S NECESSARY TO SEE THE TAPE.

THAT'S ALL I'M SUGGESTING.

MR. DAUGHERTY: MY ONLY CONCERN WAS THE FACT IN A WHETHER OR NOT THE COURT DECIDES TO ADMIT THE TAPE, BUT WE HAVE RENTED ALL THE EQUIPMENT FOR TODAY. THAT WE'RE NOT COMING BACK TILL MONDAY. IT WOULD BE CONSIDERABLE WASTE OF – CONSIDERABLE EXPENSE IF WE'RE NOT ALLOWED TO SHOW IT TODAY OR AT LEAST RULE ON THE ISSUE OF ITS ADMISSIBILITY.

THE COURT: ARE YOU ASKING FOR AN OFFER OF PROOF ON THE TAPE?

[2288] MR. BURNS: YES, YOUR HONOR.

YOUR HONOR, AT THIS POINT I DON'T WANT TO TELL MR. STANSBURY HOW TO CONDUCT HIS CASE.

ALL I'M INDICATING IS I'M GOING TO OBJECT TO THE TAPE ABSENT AN OFFER OF PROOF OF WHICH I'M UNAWARE. IF HE WANTS TO CALL SOMEONE ELSE FIRST, THAT'S FINE BY ME.

DEFENDANT STANSBURY: I HAVE ALREADY SPECIFIED I WISH TO CALL DETECTIVE GRAY FIRST.

THE COURT: WELL, SINCE WE'VE INDICATED WE CAN TAKE ANY OF THIS TESTIMONY OUT OF ORDER, AND SINCE THE TAPE IS A PROBLEM, WE'LL SEE THE TAPE. AND THEN WE'LL TAKE OFFICER GRAY OR WHOM IT IS THAT IS THE NEXT WITNESS.

SINCE THIS IS – WE HAVE BEEN DOING THIS THROUGHOUT THE TESTIMONY OF THE HEARING SO FAR.

NOW, AS TO THE TAPE ITSELF, I BELIEVE MR. BURNS MAY HAVE AN OBJECTION TO THE TAPE. AND HE INDICATED HE WANTED AN OFFER OF PROOF. I DON'T KNOW IF HE STILL REQUIRES AN OFFER OF PROOF.

MR. BURNS: YES, YOUR HONOR.

I WOULD AT THIS POINT IF THE COURT INTENDS TO VIEW IT PRIOR TO TESTIMONY.

THE COURT: MR. STANSBURY GOING TO MAKE THAT OFFER?

DEFENDANT STANSBURY: YOUR HONOR, MR. BURNS HAS PRIOR TO TESTIMONY – I HAVE NOT REQUESTED IT BE SHOWN PRIOR TO TESTIMONY.

MY PURPOSE OF THE TAPE IS FOR THE PURPOSE OF INVESTIGATING OR QUESTIONING MS. MILLER UPON THE STAND.

ASKING IF IT IS A CORRECT COPY OF WHAT SHE [2289] STATED, ET CETERA. FIND OUT WHO HER AUTHORIZED HER TO MAKE SUCH A STATEMENT FOR THE TELEVISION, FIND OUT WHO ELSE NOT

ONLY AUTHORIZED BUT PERHAPS DISCUSSED THE CONVERSATION OR THE CONTENTS TO BE DISCUSSED –

THE COURT: WHAT IS THE STATEMENT IN THE TAPE?

DEFENDANT STANSBURY: I HONESTLY DON'T RECALL, YOUR HONOR AT THIS MOMENT BECAUSE OF THE SIMPLE FACT I HAVE HAD ONE OPPORTUNITY WHICH WAS VERY LIMITED IN WHICH TO VIEW THE TAPE, WHICH WAS ON A SPECIFIC DAY THAT I ALSO HAD TO GO THROUGH OVER 300 PHOTOGRAPHS, AND I BELIEVE IT WAS ESTIMATED BY COUNSEL THAT I COULD PERHAPS DO ALL OF THAT WITHIN THE NEIGHBORHOOD OF 30 MINUTES.

I THINK IT IS RATHER OBVIOUS I HAVE NOT HAD ACCESS TO THAT TAPE SO THAT I COULD VIEW IT OVER AND OVER AND OVER.

MR. DAUGHERTY: THE COURT MAY RECALL –

THE COURT: IF YOU DON'T KNOW WHAT'S ON THE TAPE IT'S DIFFICULT TO KNOW WHETHER IT'S RELEVANT OR NOT OR WHETHER YOU WOULD EVEN WANT TO –

DEFENDANT STANSBURY: I KNOW THE BASIC CONTENTS. I CANNOT SAY THE EXACT WORDS. I DO NOT RECALL THE EXACT WORDS.

MR. DAUGHERTY: THE COURT MAY RECALL AT MR. STANSBURY'S REQUEST WE HAD

BROUGHT THE TAPE IN AND RENTED THE EQUIPMENT ONE AFTERNOON HERE SO THAT HE CAN REVIEW IT.

THE COURT: I DO RECALL THAT, YES.

MR. DAUGHERTY: I'VE DONE SO AGAIN.

MY ONLY CONCERN IS THERE IS A COST INVOLVED [2290] OF $38 A DAY FOR THE RENTAL OF THE EQUIPMENT AND SOMEBODY'S PAYING FOR IT.

THE COURT: WELL, I'M GOING TO – WHAT I'M GOING TO DIRECT IS THAT WE VIEW THAT PORTION OF THE TAPE SO THE EQUIPMENT CAN BE RETURNED AND WE DON'T HAVE THIS RECURRING COST. AND WE'LL DO THAT IMMEDIATELY AFTER THE BREAK.

CAN YOU SET IT UP?

THE COURT: HOW LONG DO YOU THINK THIS PORTION OF THE TAPE IS GOING TO BE?

MR. BENART: FIVE MINUTES.

THE COURT: FIVE MINUTES, ALL RIGHT.

MR. DAUGHERTY: MR. BURNS MAY WANT TO VIEW IT BEFORE HE MAKES HIS OBJECTION.

MR. BURNS: I'M CERTAINLY GOING TO VIEW IT IF THE COURTS GOING TO VIEW IT.

THE COURT: I THOUGHT I WAS GOING TO EXCLUDE YOU AT THAT TIME.

MR. BURNS: THANK YOU, YOUR HONOR.

I APPRECIATE MR. DAUGHERTY'S OFFER.

DEFENDANT STANSBURY: AM I TO UNDERSTAND, YOUR HONOR, THAT UPON THE COURTS VIEWING THE TAPE THE EQUIPMENT WILL THEN BE RETURNED?

THE COURT: IF THERE'S NO REASON –

DEFENDANT STANSBURY: AT WHICH TIME I'LL HAVE NO OPPORTUNITY TO SHOW THE TAPE TO MS. MILLER IN THE EVENT I FEEL THAT THERE IS A DESIRE AT THAT TIME OR A NEED TO DO SO AT THAT TIME?

THE COURT: IS MS. MILLER HERE.

[2291] LET'S TAKE MILLER'S TESTIMONY NEXT. WE'LL DO MILLER'S TESTIMONY NEXT.

WE HAVE BEEN TAKING THE MATTERS OUT OF WHATEVER ORDER, IF SHE'S HERE AND – UNLESS THERE'S SOME SHOWING TO ME THAT THERE IS SOME SERIOUS REASON THAT TACTICALLY OR OTHERWISE THAT WOULD IN SOME WAY EFFECT MY RULING ON THIS MOTION IN WHATEVER ORDER WE'RE GOING TO TAKE IT, WE'LL TAKE MS. MILLER NEXT.

I DON'T CARE WHETHER WE TAKE HER TESTIMONY FIRST OR THE TAPE FIRST BUT WE'LL DO THAT THIS AFTERNOON. WE'LL TAKE ABOUT A 10 MINUTES RECESS AND WE'LL COME BACK.

YOU WANT TO SET THAT EQUIPMENT UP, MR. BENART, FINE.

AND AFTER YOU'VE GOT THE EQUIPMENT SET UP, WILL YOU BRING MR. STANSBURY BACK, YOU CAN VIEW THAT PORTION OF THE TAPE, AND BEFORE I HAVE AN OPPORTUNITY TO SEE IT, WE'LL ARGUE AND FIND OUT ON THE BASIS OF THE ARGUMENT WHETHER IT IS RELEVANT OR SOMETHING THAT I SHOULD SEE AND CONSIDER RULING ON THIS MOTION.

THANK YOU.

(RECESS.)

[2292] THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, AND MR. STANSBURY ARE PRESENT.

MR. DAUGHERTY: YOUR HONOR, FOR THE RECORD, MR. STANSBURY, MR. ROBUSTO AND MYSELF AND MR. BURNS HAVE ALL HAD AN OPPORTUNITY TO VIEW THE TAPE HERE IN COURT.

THE COURT: ALL RIGHT. I'M PREPARED TO SEE THE TAPE UNLESS YOU WANT TO HEAR SOME ARGUMENT.

MR. DAUGHERTY: WE WOULD SUGGEST THAT THE COURT VIEW THE TAPE SUBJECT TO A MOTION TO STRIKE ON THE GROUND OF RELEVANCE.

IT WOULD BE DIFFICULT FOR THE COURT TO MAKE THAT DETERMINATION I THINK, WITHOUT SEEING THE TAPE.

MR. BURNS: SUBMITTED, YOUR HONOR.

THE COURT: ALL RIGHT. FINE. GRANTED.

WE'LL DO THAT.

THE CLERK: ARE COUNSEL GOING TO WAIVE THE REPORTER RECORDING THE WORDS ON THE TAPE?

THE COURT: MAY WE REFER TO THE TAPE AND RETAIN IT BUT NOT REQUIRE THAT THE REPORTER ATTEMPT TO REPORT WHAT'S ON THE TAPE? WE'VE GOT THE TAPE TO VIEW IT IN ANY EVENT.

DEFENDANT STANSBURY: YES, SIR.

MR. BURNS: SO STIPULATED.

THE COURT: FINE. THANK YOU.

THANK YOU, GENTLEMEN.

(VIEWING THE TAPE.)

MR. DAUGHERTY: THAT, I BELIEVE IS THE RELEVANT [2293] PORTION OF THE TAPE.

THE COURT: IS THAT IT?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. WHAT IS THE DATE?

IT DOES NOT IDENTIFY WHAT THE DATE OF THAT NEWS BROADCAST IS?

MR. BURNS: NO, IT DOES NOT.

MR. DAUGHERTY: NO, IT DOES NOT, FROM A FOUNDATIONAL STANDPOINT, AS FAR AS THE DATE IS CONCERNED.

THE COURT: YES. I WOULD GATHER INFERENTIALLY, IF MR. STANSBURY WAS INTERVIEWED LATE IN THE EVENING ON THE 29TH, AND HE WAS BOOKED SOMETIME AROUND 10:30 IN THE MORNING, WE'RE TALKING ABOUT A BROADCAST ON THE 30TH.

MR. BURNS: IT CERTAINLY WAS AFTER THOSE EVENTS.

PERHAPS WILLIE MILLER CAN HELP US LATER.

I HAVE NOT OBJECTED TO A FOUNDATIONAL BASIS AT THIS POINT.

THE COURT HAS VIEWED THE RECORD.

MY OBJECTION TO THE INFORMATION IS NOT LACK OF FOUNDATION AT THIS POINT.

IT'S MERELY ONE OF RELEVANCY. AND I'LL DEVELOP THAT IN QUESTIONING OF HER WHEN AND IF SHE TAKES THE STAND.

THE COURT: FINE. THANK YOU.

FOR THE RECORD, I GUESS THE RECORD SHOULD REFLECT THAT WE HAVE VIEWED A TAPE OF A NEWS BROADCAST.

I'M NOT SURE WHAT CHANNEL IT IS. I BELIEVE [2294] IT'S CHANNEL 4.

DEFENDANT STANSBURY: CHANNEL 2.

MR. DAUGHERTY: CBS.

THE COURT: AND IT WAS APPROXIMATELY A MINUTE TO A MINUTE AND A HALF THAT WE VIEWED THE NEWSCASTER WITH THE REPORTER DISCUSSED THE ARREST OF MR. STANSBURY WITH ONE OF THE OFFICERS, WILLIE MILLER.

BASICALLY, THAT'S THE TAPE, AND WE'LL RETAIN THAT TAPE FOR ANY FURTHER USE.

DO YOU WANT TO OFFER THAT RIGHT AT THIS MOMENT?

DEFENDANT STANSBURY: YES, SIR, I WOULD AT THIS TIME.

MR. BURNS: I THINK THE TAPE SHOULD BE MARKED FOR IDENTIFICATION AT THIS TIME, AND WE'LL DETERMINE WHETHER IT'S EVIDENCE LATER.

THE CLERK: DEFENDANTS C.

THE COURT: IT'S DEFENDANTS C. IT WILL BE SO MARKED.

(MARKED FOR ID: DFT'S C, VIDEOTAPE)

ALL RIGHT. THANK YOU.

NOW, WHERE ARE WE?

DEFENDANT STANSBURY: AT THIS TIME, I WOULD CALL WILLIE MILLER, YOUR HONOR.

THE COURT: ALL RIGHT.

[2295] WILLIE MILLER, +

A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE STAND.

STATE YOUR NAME FOR THE RECORD, AND SPELL IT.

THE WITNESS: MY NAME IS WILLIE MILLER. W-I-L-L-I-E, M-I-L-L-E-R.

THE COURT: YOU MAY PROCEED, SIR.

DIRECT EXAMINATION +

BY DEFENDANT STANSBURY:

Q. MISS MILLER, MAY I ASK YOUR OCCUPATION?

A. I'M A DEPUTY SHERIFF.

Q. WERE YOU SO EMPLOYED ON OR ABOUT AUGUST THE 28TH OF 1982 – OF SEPTEMBER, 1982 UP UNTIL OCTOBER 5TH OF 1982?

A. YES, I WAS.

Q. DURING THAT PERIOD OF TIME, DID YOU HAVE AN OCCASION TO GIVE AN INTERVIEW WITH THE PRESS?

[2296] A. DURING THAT PERIOD OF TIME, I'VE GIVEN NUMEROUS INTERVIEWS TO THE PRESS, YES.

Q. WHAT WAS YOUR PARTICULAR ASSIGNMENT AT THAT TIME?

A. I WAS ASSIGNED TO THE SHERIFF'S INFORMATION BUREAU, AND I HAVE BEEN SINCE MAY 1981.

Q. COULD YOU GIVE US SOME TYPE OF A DESCRIPTION OF WHAT THAT JOB BASICALLY CONSIST OF?

A. YES. THE SHERIFF'S INFORMATION BUREAU HAS TWO PRIMARY RESPONSIBILITIES. ONE OF WHICH IS TO MAINTAIN A LIAISON WITH THE NEWS MEDIA REGARDING INCIDENTS THAT INVOLVED THE SHERIFF'S DEPARTMENT.

Q. DO YOU NORMALLY JUST GO OUT AND GIVE AN INTERVIEW, OR DOES SOMEONE HAVE TO REQUEST IT, OR DO YOU HAVE TO BE INSTRUCTED TO DO IT, OR HOW IS THAT HANDLED?

MR. BURNS: OBJECTION, YOUR HONOR, ON GROUNDS OF RELEVANCE.

THE COURT: OVERRULED?

THE WITNESS: THE OFFICE IS A 24-HOUR OFFICE SET UP SPECIFICALLY FOR THE PURPOSE OF PROVIDING THE NEWS MEDIA WITH INFORMATION ON CASES THAT THE SHERIFF'S DEPARTMENT IS INVOLVED IN.

THE INFORMATION IS SOLICITED BY THE NEWS MEDIA VIA PHONE CALLS OR REQUESTS FOR STAND UP INTERVIEWS WITH TELEVISION STATIONS.

Q. DURING A REQUEST FOR AN ACTUAL INTERVIEW, DOES THAT HAVE TO BE APPROVED BY ANY OTHER SUPERVISORS OR –

[2297] A. THAT'S THE FUNCTION OF OUR OFFICE. AND WE'RE AUTHORIZED TO MAKE STATEMENTS BASED ON INFORMATION PROVIDED BY THE HANDLING INVESTIGATOR OR SOMEONE DIRECTLY CONNECTED WITH THE CASE.

Q. BUT YOU MUST HAVE INFORMATION DIRECTLY FROM SOMEONE CONNECTED WITH THE CASE?

A. YES.

Q. OR THE –

A. WE RECEIVE OUR INFORMATION FROM SOMEONE DIRECTLY INVOLVED WITH THE CASE.

IT'S CALLED IN TO OUR OFFICE BY EACH FACILITY OR BUREAU OR UNIT THAT'S INVOLVED IN AN INCIDENT THAT MIGHT BE NEWS WORTHY THAT'S OUR –

MR. BURNS: MAY I TAKE THE WITNESS ON VOIR DIRE?

THE COURT: YES, YOU MAY.

VOIR DIRE EXAMINATION +

BY MR. BURNS:

Q. WERE YOU IN ANY WAY CONNECTED WITH THE INVESTIGATION OF THE DISAPPEARANCE OR DEATH OF ROBYN JACKSON?

A. NO, I WAS NOT.

Q. WERE YOU IN ANY WAY PRIOR TO MAKING ANY NEWS RELEASES PROVIDED WITH COPIES OF ANY POLICE REPORTS CONCERNING THAT INVESTIGATION?

A. NO, I WAS NOT.

Q. WERE YOU AT ANY TIME A PARTY TO BY WAY OF ORAL STATEMENTS FROM MR. THOMAS PATTERSON – STRIKE [2298] THAT – LIEUTENANT TOM JOHNSTON ANY WAY A PARTY TO WHAT HIS THINKING WAS DURING THE TIME IN WHICH HE WAS INVESTIGATING THIS CASE?

A. NO, I WAS NOT.

Q. DID YOU AT ANY TIME RECEIVE ANY INFORMATION IN ANY FORM DIRECTLY FROM LIEUTENANT THOMAS JOHNSTON IN THIS CASE?

A. NO, I DID NOT.

Q. DID YOU HAVE ANY CONVERSATION WITH LIEUTENANT THOMAS JOHNSTON UP UNTIL, SAY, A FEW DAYS AGO BEFORE YOU WENT TO COURT?

A. NO, I DID NOT.

Q. ANY STATEMENTS THAT YOU MADE TO THE POLICE, THAT WAS THE SOLE – STRIKE THAT.

ANY STATEMENTS YOU MADE TO THE PRESS, THAT WAS THE SOLE BASIS OF THOSE STATEMENTS?

A. IT WAS BASED ON TELEPHONED INFORMATION THAT WAS RECEIVED IN OUR OFFICE BY A DEPUTY. I DON'T KNOW WHICH DEPUTY.

THAT WAS RECORDED FOR THE PURPOSE THAT EACH DEPUTY IN THE OFFICE WOULD BE FAMILIAR WITH THE STATEMENTS THAT WAS BEING MADE AVAILABLE TO THE PRESS. AND EACH OFFICER IN THAT UNIT HAD THE SAME INFORMATION.

Q. DO YOU KNOW WHO PHONED IN THAT INFORMATION TO YOUR UNIT AT THAT TIME?

A. NO, I DID NOT.

Q. DO YOU KNOW IN ANY WAY WHAT THE SOURCE OF THAT INFORMATION WAS?

A. [2299] A HOMICIDE INVESTIGATOR.

Q. DO YOU KNOW WHO THAT HOMICIDE INVESTIGATOR WAS?

A. NO, I DO NOT.

Q. DO YOU KNOW IF HE WAS INVOLVED IN THIS CASE, OR WHETHER HE WAS A LIAISON OR WHAT HIS PURPOSE WAS?

A. IT WAS AN INVESTIGATOR ASSIGNED TO THIS PARTICULAR CASE.

MR. BURNS: I HAVE NO FURTHER QUESTIONS.

I'D OBJECT TO ANY STATEMENTS FROM THIS WITNESS AT THIS POINT IN TIME AS BEING TOTALLY IRRELEVANT TO THE MIRANDA MOTION.

SHE WAS NOT AT ANY TIME IN CONTACT WITH THE INVESTIGATOR.

IF THE MOTION DEALS WITH WHAT HE WAS THINKING AT THE TIME HE WAS INTERVIEWING MR. STANSBURY, SHE DIDN'T EVEN HAVE A CONVERSATION WITH HIM, NOR DID SHE HAVE ANY INFORMATION THAT WOULD BE RELEVANT TO HIM.

ANY INFORMATION SHE HAS IS BASED UPON A PIECE OF PAPER TRANSCRIBED BY SOMEBODY ELSE.

THE SOURCE OF THAT PAPER IS UNKNOWN AT THIS TIME. IT IS AT LEAST TRIPLE LAYER HEARSAY.

THE COURT: MR. STANSBURY, DO YOU WISH TO RESPOND?

DEFENDANT STANSBURY: YOUR HONOR, I BELIEVE IT IS A LITTLE HARD TO RESPOND ON THAT.

THE COURT: ON WHAT, SIR? I'M SORRY.

DEFENDANT STANSBURY: I'M REFERRING TO WHAT HAS JUST BEEN VIEWED.

[2300] I WOULD SPECIFY IN REBUTTAL OF MR. BURNS THAT IT IS HIGHLY RELATIVE DUE TO THE FACT THAT MISS MILLER DID SPECIFY THAT IT HAD BEEN RECORDED AS TO WHAT DEPUTY WAS INVOLVED.

SHE DID SPECIFY IT WAS A SPECIFIC MEMBER OF THE HOMICIDE INVESTIGATION TEAM WHICH WAS ON THAT CASE.

I CAN ONLY PRESUME THAT NAME WOULD HAVE BEEN RECORDED. I CAN ONLY PRESUME THAT MISS MILLER COULD INFORM US WHERE THOSE RECORDS MAY BE KEPT.

I DID OBSERVE MISS MILLER, UPON STEPPING ONTO THE WITNESS STAND, HAVING SOME TYPE OF A FOLDER WITH NUMEROUS DOCUMENTS THEREIN ALONG WITH AN ATTACHE CASE.

I CAN ONLY ASSUME SHE CAME PREPARED TO OFFER TESTIMONY IN THIS CASE TODAY RELATING TO HER KNOWLEDGE, OR PAPERS WHICH SHE COULD POSSIBLY REFER TO FOR VARIOUS REASONS TO OBTAIN NAMES OR WHATEVER IS NEEDED DURING THIS PERIOD OF TIME.

THE COURT: IF YOU WISH TO INQUIRE OF HER THE SOURCE OF HER INFORMATION AND WHERE SHE GOT IT, I THINK THAT MIGHT BE RELEVANT.

BUT AT THIS POINT, I'M GOING TO LIMIT YOUR EXAMINATION TO THAT.

HOWEVER, I'M JUST INDICATING HOW I VIEW THE EVIDENCE AT THIS POINT.

YOU ASK WHATEVER QUESTIONS YOU'RE GOING TO ASK, AND I'LL RULE ON IT ON A QUESTION BY QUESTION BASIS.

[2301] DIRECT EXAMINATION + (RESUMED)

BY DEFENDANT STANSBURY:

Q. MRS. MILLER, AS I JUST SPECIFIED, I DID VIEW YOU STEPPING ONTO THE STAND WITH NUMEROUS ITEMS.

DID YOU PER CHANCE BRING ANY RECORDS RELATED TO THE INVESTIGATION THAT WE'RE HERE ON TODAY CONCERNING THE STANSBURY CASE?

A. NO, SIR, I DID NOT.

Q. DID YOU BRING ANY LOGS OR DOCUMENTS OF OTHER TYPES RELATING TO THAT MATTER?

A. NO, I DID NOT.

Q. WOULD YOU HAVE ANY IDEA OF WHERE THE NAMES AND DOCUMENTS WHICH YOU STATED WERE RECORDED WOULD BE LOCATED AT?

MR. BURNS: OBJECTION, YOUR HONOR.

THIS IS A FISHING EXPEDITION, ATTEMPTING TO DEVELOP I DON'T KNOW WHAT, BUT NOT RELEVANT TO THE MOTION AT THIS TIME.

THE COURT: OVERRULED.

DO YOU UNDERSTAND THE QUESTION?

THE WITNESS: YES.

THE SOURCE OF THE INFORMATION IS A CODE 20 FORM, WHICH IS USED BY OUR OFFICE.

IT'S AN INTERNAL DOCUMENT, AND AT THE SHERIFF'S INFORMATION BUREAU.

Q. SO LEGALISTICALLY SPEAKING, THERE PROBABLY WOULD NOT BE ANY PROBLEM IN GETTING THAT PARTICULAR INFORMATION?

[2302] A. AND YOUR OBTAINING IT, SIR?

Q. MA'AM?

A. I DON'T UNDERSTAND YOUR QUESTION.

Q. WOULD THERE BE ANY PROBLEM TO YOUR KNOWLEDGE OF, AS AN EXAMPLE, ONE OF THE INVESTIGATORS IN THIS CASE OBTAINING THAT INFORMATION?

MR. BURNS: OBJECTION, YOUR HONOR. PERHAPS BEYOND THE SCOPE OF THIS WITNESSES' KNOWLEDGE AND IRRELEVANT ANYWAY.

THE COURT: IT MAY NOT BE BEYOND THE SCOPE OF WHAT SHE CAN ANSWER.

I'M GOING TO OVERRULE IT?

THE WITNESS: I DON'T KNOW IF IT WOULD BE A PROBLEM.

IT'S AN INTERNAL DOCUMENT THAT'S SOLELY USED BY OUR OFFICE.

THE COURT: OKAY.

BY DEFENDANT STANSBURY:

Q. DO YOU HAVE ANY PERSONAL FILES THAT YOU YOURSELF KEEP REGARDING WHO INFORMS YOU OF VARIOUS INFORMATION THAT YOU RELATED TO THE PRESS?

A. ONLY THE CODE 20 INFORMATION THAT WE RECORD IN OUR OFFICE.

I HAVE NO PERSONAL FILES.

I HAVE NO NEED FOR THEM.

Q. THERE'S NEVER ANY NEED TO BE ABLE TO RECALL THE PARTICULAR NAME OF AN INVESTIGATOR THAT CONTACTS YOU OR RELAYS INFORMATION TO YOUR OFFICE?

[2303] A. NO. WE CAN SIMPLY REFER TO THE FORM, THE DATE AND THE TIME OF AN INCIDENT AND CALL WHATEVER AGENCY, WHICHEVER OF OUR BUREAU IS INVOLVED, AND ASK FOR THE INVESTIGATOR.

WE DON'T HAVE TO HAVE HIS ACTUAL NAME.

NORMALLY WE CAN REFER TO A CASE BY VICTIM OR SUSPECT IN THE HOMICIDE CASE AND CALL UP AND ASK WHO IS THE INVESTIGATOR HANDLING THAT PARTICULAR CASE.

Q. DID YOU ACCEPT THIS CALL YOURSELF FROM THE INVESTIGATOR ON THAT CASE?

A. NO, I DID NOT, SIR.

Q. DO YOU KNOW WHO DID?

A. NO, I DO NOT.

Q. ARE RECORDS NORMALLY KEPT ON SUCH ITEMS AS THAT AS TO WHO ACCEPTS SUCH CALLS?

A. NO. EVERY DEPUTY IN THE OFFICE HAS A RESPONSIBILITY THAT IF CODE 20 INFORMATION OR

PRESS INFORMATION IS CALLED IN TO THE OFFICE, TO RECORD THAT INFORMATION FOR THE USE OF ALL OTHER DEPUTIES IN THE OFFICE.

AND THERE'S NEVER A NEED TO IDENTIFY THE SOURCE THAT IS TAKING DOWN THE INFORMATION.

IT'S EITHER TYPED OR HANDWRITTEN. AND EVERY DEPUTY IN THE OFFICE MAKES USE OF IT.

Q. SO THEREFORE, THAT LEAVES NO WAY OF BACKTRACKING AS TO WHO TOOK THE INFORMATION.

MR. BURNS: OBJECTION. ARGUMENTATIVE.

I'LL WITHDRAW.

[2304] THE WITNESS: NO.

BY DEFENDANT STANSBURY:

Q. UPON YOUR GIVING AN INTERVIEW TO THE NEWS MEDIA, DO YOU, OR DOES ANYONE IN YOUR OFFICE PREPARE ANY TYPE OF REFERENCE NOTES OR SCRIPT OR ANYTHING OF THAT NATURE?

A. THAT'S WHAT A CODE FORM IS.

Q. AND YOU SIMPLY REVIEW IT CLOSELY AND ALLOW THE INTERVIEW?

A. THAT IS CORRECT.

Q. DO YOU RECALL THIS PARTICULAR INTERVIEW REGARDING THE ROBYN JACKSON CASE?

A. I DID A NUMBER OF INTERVIEWS THAT PARTICULAR DAY VIA TELEPHONE. AND PERHAPS I DID

A TELEVISION INTERVIEW, BUT IT WAS A VERY BUSY DAY.

THERE WAS A LOT OF PRESS INTEREST IN THE STORY, AND I DON'T RECALL ANY PARTICULAR INTERVIEWS.

Q. DO YOU RECALL THE PARTICULAR INFORMATION THAT WAS SPECIFICALLY ON THAT – I BELIEVE YOU CALL IT A CODE 20 FORM?

A. NOT IN DETAIL, NO.

Q. CAN YOU RELATE TO US WHAT INFORMATION YOU DO RECALL FROM THAT FORM?

A. I RECALL THAT WE WERE INFORMED THAT ROBERT STANSBURY HAD BEEN ARRESTED AND CHARGED WITH KIDNAPPING AND MURDER, AND THAT HE HAD BEEN BOOKED AT POMONA POLICE STATION, I BELIEVE. AND THAT AN ICE CREAM TRUCK HAD BEEN IMPOUNDED.

[2305] BUT BASICALLY, THAT'S ALL I REMEMBER. I DON'T KNOW IF IT CONTAINED ANYTHING OTHER THAN THAT INFORMATION.

Q. IF YOU WERE TO PERHAPS VIEW THAT INTERVIEW WITH THE NEWS MEDIA, WOULD THAT PERHAPS POSSIBLY JOG YOUR MEMORY?

A. I'M SURE IT WOULD.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, I WOULD MOVE TO ALLOW THE WITNESS TO VIEW THE INTERVIEW IN QUESTION.

THE COURT: THAT'S FINE.

MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT FOR THE SIMPLE REASON THAT WHATEVER MR. STANSBURY IS DOING AT THIS TIME HAS NOT DEALT WITH THE ISSUE THAT THIS WITNESS HAS NOT HAD IN ANY POINT IN TIME ANY CONTACT WITH THE INVESTIGATOR, MR. JOHNSTON IN THIS CASE, WHO WAS THE SOLE PERSON CONDUCTING THE INTERVIEW WITH THE DEFENDANT AND WHOSE STATE OF MIND IS THE SOLE ISSUE BEFORE THIS COURT TO DECIDE.

REGARDLESS OF WHAT A 20 FORM IS, WHAT SHE SAID, THAT WHETHER IT JOGS HER MEMORY TO, WE HAVEN'T GOT BY THE BASIC ISSUE THIS IS ALL TRIPLE, AT LEAST DOUBLE, PERHAPS TRIPLE HEARSAY TO THE ISSUES AT HAND.

THE COURT: WHAT INFORMATION ARE YOU ATTEMPTING TO GET FROM THIS, MR. STANSBURY?

DEFENDANT STANSBURY: I'M ATTEMPTING TO FIND OUT WHERE THE INFORMATION CAME FROM, YOUR HONOR.

THE COURT: YOU MEAN WHICH DETECTIVE TOLD HER ABOUT [2306] THE – WHICH INVESTIGATOR TOLD HER ABOUT THE FACTS THAT SHE WAS INTERVIEWED?

DEFENDANT STANSBURY: NO, SIR.

AT THIS POINT, YOUR HONOR, I'M ATTEMPTING TO PRESUME THAT SOMEONE IN THE SHERIFF'S DEPARTMENT IS NOT LYING OR FALSIFYING RECORDS IN ANY WAY.

AND IF THEY ARE NOT, THEN I COULD ONLY PRESUME THAT THE CODE 20 FORM WOULD BE ACCURATE.

AND I AM ATTEMPTING TO FIND OUT WHAT INFORMATION WAS CONTAINED WITHIN THAT DOCUMENT.

THE COURT: ALL RIGHT, WHAT IS IT THAT YOU HOPE THAT THIS FILM WILL DO IN TERMS OF JOGGING HER MEMORY?

DEFENDANT STANSBURY: PERHAPS ALLOW HER TO RECALL MORE OF THE INFORMATION THAT WAS CONTAINED IN THAT DOCUMENT WHICH SHE USED TO FORM HER INTERVIEW WITH THE NEWS MEDIA ON.

THE COURT: WHY DON'T YOU SUBPOENA THE DOCUMENT.

MR. BURNS: YOUR HONOR, I DON'T KNOW THAT THERE HAS BEEN ANY - ESTABLISHED ANY RELEVANCE TO THE DOCUMENT ITSELF.

THE COURT: I UNDERSTAND THAT.

IF IT'S AVAILABLE AND IT EXISTS, IT MAY BE A DOCUMENT THAT HE CAN GET AHOLD OF AND TAKE A LOOK AT. AND IT MAY EVEN IDENTIFY WHERE THE INFORMATION CAME FROM.

DEFENDANT STANSBURY: I HAVE NO OBJECTION TO THAT, YOUR HONOR, EXCEPT FOR THE AMOUNT OF TIME THAT IT WOULD TAKE IN RELATION TO THIS PARTICULAR HEARING.

MR. BURNS: YOUR HONOR, MAY I HAVE A MOMENT WITH [2307] THE WITNESS?

THE COURT: YES.

(COUNSEL AND WITNESS CONFER IN SOTTO VOCE.)

MR. BURNS: MAY I ASK THE WITNESS TWO QUESTIONS?

THE COURT: YES.

MR. BURNS: WILLIE, AT SOMETIME IN THE MORNING, DID YOU CALL DOWN TO YOUR DEPARTMENT AND ASK IF SOMEONE HAD THE 20 FORM AVAILABLE?

THE WITNESS: YES.

MR. BURNS: DID THEY READ THAT 20 FORM TO YOU?

THE WITNESS: YES.

MR. BURNS: DID YOU TAKE NOTES OR COPY DOWN WHAT THAT 20 FORM SAID?

THE WITNESS: HANDWRITTEN NOTES, YES.

MR. BURNS: DO YOU HAVE THOSE WITH YOU HERE TODAY?

THE WITNESS: YES.

MR. BURNS: I HAVE NO OBJECTION TO THEM RECEIVING THOSE NOTES AT THIS TIME OR READING WHAT IS ON THE 20 FORM FOR WHATEVER RELEVANCE IT HAS.

THE COURT: DO YOU WANT TO SEE THE NOTES?

DEFENDANT STANSBURY: YES, SIR, I WOULD LIKE TO.

I THOUGHT THAT I HAD ASKED EARLIER IF SHE HAD ANY DOCUMENTS RELATING TO THAT INTERVIEW IN ANY WAY.

THE COURT: YOU SEE, THAT WASN'T WHAT I UNDERSTOOD OF THE QUESTION.

DEFENDANT STANSBURY: I WAS SIMPLY STATING THAT I THOUGHT I HAD.

THE COURT: YOU THOUGHT WRONG, I BELIEVE.

[2308] YOU ARE ENTITLED TO SEE THOSE NOTES IF YOU WOULD LIKE TO SEE THEM.

ARE THERE NOTES ONE PERSON CAN EASILY READ?

I THINK IT WOULD BE JUST AS EASY TO READ INTO THE RECORD AS TO WHAT IT SAID.

THE WITNESS: "THE TIME OF THE CALL WAS 0130 HOURS, 9-3O-82." AND BESIDES THE DATE AND THE TIME IS THE WORD "UPDATE" MEANING THAT THE HOMICIDE INVESTIGATOR HAS UPDATED AN INITIAL ADVISORY THAT WE OFFERED TO THE PRESS WHICH IN ESSENCE STATES THAT SHERIFF'S HOMICIDE INVESTIGATORS WERE ASSISTING BALDWIN PARK IN A MURDER INVESTIGATION. AND THAT'S ALL THAT THAT SAYS.

THE UPDATE INFORMATION SAYS THAT "SHERIFF'S HOMICIDE INVESTIGATORS ARRESTED ROBERT STANSBURY, MALE WHITE, 39, OF POMONA FOR THE MURDER OF ROBYN L. JACKSON, FEMALE WHITE, 10, AT HIS RESIDENCE."

"STANSBURY RENTED AND OPERATED AN ICE CREAM TRUCK IN BALDWIN PARK. CAME TO THE ATTENTION OF HOMICIDE DETECTIVES AFTER OTHER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED."

"STANSBURY'S BEHAVIOR WITH CHILDREN HE SOLD ICE CREAM TO WAS NOT ALWAYS APPROPRIATE IT WAS LEARNED."

"AT THE TIME OF ARREST, DETECTIVES IMPOUNDED HIS TRUCK BELIEVING IT WAS THE ONE USED TO TRANSPORT THE YOUNG VICTIM."

"STANSBURY WAS BOOKED AT POMONA POLICE FOR KIDNAPPING AND MURDER." [2309] THERE WAS AN UPDATE AT 7 O'CLOCK IN THE MORNING ON THE DATE OF 10-4-82, THAT SAID "A COMPLAINT TO BE FILED POMONA DISTRICT ATTORNEY'S OFFICE ON 10-4 AND ARRAIGNMENT AT CITRUS COURT."

THERE WAS AN UPDATE AT 1445 HOURS ON 10-4 MADE BY LIEUTENANT VANCE, "CHARGES OF MURDER, KIDNAPPING, RAPE AND SEX CRIMES AGAINST CHILDREN HAD BEEN FILED WITH THE DA'S OFFICE AGAINST ROBERT STANSBURY."

"HE WILL BE ARRAIGNED ON MONDAY."

BY DEFENDANT STANSBURY:

Q. RELATING TO THE STATEMENT THAT YOU JUST MADE OR READING FROM THAT PAPER CONCERNING THE INVESTIGATION HAVING LED DIRECTLY TO ROBERT STANSBURY.

MR. BURNS: OBJECTION, YOUR HONOR.

THERE'S NOTHING IN THAT PAPER THAT CONTAINS THOSE WORDS. THE QUESTION IS INACCURATE.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: MAY I SEE YOUR NOTES, MISS MILLER?

THE WITNESS: CERTAINLY.

DEFENDANT STANSBURY: I THINK IT MIGHT –

THE COURT: WOULD YOU LIKE IT READ BACK?

DEFENDANT STANSBURY: I THINK IT MIGHT BE EASIER IF I READ IT.

Q. MISS MILLER, WERE YOU ACQUAINTED WITH THE INDIVIDUAL YOU WERE SPEAKING WITH ON THE PHONE?

MR. BURNS: OBJECTION, YOUR HONOR. THERE IS NO INDICATION THAT SHE SPOKE TO THE PERSON. IN FACT HER [2310] TESTIMONY WAS –

THE COURT: I DON'T KNOW WHETHER SHE'S TALKING ABOUT THE PERSON SHE TALKED TO THIS MORNING OR IN 1982.

YOU'LL HAVE TO MAKE THE QUESTION MORE CLEARER.

BY DEFENDANT STANSBURY:

Q. I'M REFERRING TO THE CONVERSATION YOU ALLEGED TO HAVE HAD THIS MORNING, MISS MILLER.

A. YES, I'M FAMILIAR WITH IT.

Q. ARE YOU FAMILIAR WITH THE PERSON YOU WERE SPEAKING TO? DID YOU RECOGNIZE WHO THAT PERSON WAS BY THEIR VOICE?

A. YES. IT WAS THE SECRETARY ASSIGNED TO THE SHERIFF'S INFORMATION BUREAU.

Q. DO YOU KNOW IF THEY WERE READING DIRECTLY FROM THE INFORMATION THAT WAS THERE, OR WERE THEY JUST GIVING YOU A GENERAL CONTEXT, OR DO YOU KNOW?

A. THE SECRETARY READ THE INFORMATION TO ME FROM WHICH I TOOK NOTES.

SHE READ THEM SLOWLY SO THAT I – THERE ARE SOME ABBREVIATIONS THERE. BUT I TOOK NOTES VERBATIM AS SHE READ THE INFORMATION TO ME.

Q. IT WAS VERBATIM THEN?

A. YES, IT WAS.

Q. I BELIEVE THIS FIRST PORTION WHICH COVERS MAYBE ONE INCH OR HALF AT THE TOP PORTION OF THE PAGE, WAS ALL TAKEN DURING THE

SAME PERIOD OF TIME WHICH IS MARKED UP HERE AS ON 1:30, 9-30-82?

[2311] A. YES.

Q. ALL OF THIS INFORMATION CAME IN AT THIS TIME?

A. YES.

Q. THEREFORE, YOU RECEIVED THE INFORMATION WHICH IS ON THAT FORM THAT THE ICE CREAM TRUCK HAD BEEN IMPOUNDED – YOU RECEIVED THE INFORMATION AT 1:30 OF THAT MORNING THAT THE ICE CREAM TRUCK HAD ALREADY BEEN IMPOUNDED?

MR. BURNS: OBJECTION, YOUR HONOR.

THIS WITNESS DID NOT INDICATE THAT SHE RECEIVED THE INFORMATION.

ALL SHE OBTAINED IS WHAT IS ON THE CARD. HER INDICATION SHE IS NOT THE PERSON THAT RECEIVED THE PHONE CALL THAT CAUSED THAT CARD TO BE DUPLICATED.

DEFENDANT STANSBURY: LEARNED COUNSEL IS CORRECT.

I'LL WITHDRAW THE QUESTION AND REPHRASE IT.

Q. DID YOU RECEIVE THE INFORMATION TODAY FROM THE SECRETARY FROM THAT FORM CODE 20 THAT THE ICE CREAM TRUCK HAD BEEN IMPOUNDED DURING THAT PERIOD OF TIME BEFORE THE CODE 20 FORM WAS FILED?

MR. BURNS: OBJECTION, YOUR HONOR.

THE WITNESS HAS TESTIFIED THAT SHE TOOK VERBATIM WHAT INFORMATION IS ON THE FORM AS READ TO HER.

THAT'S THE EXTENT OF HER KNOWLEDGE AT THIS POINT IN TIME.

I DON'T UNDERSTAND WHAT HIS QUESTION IS. THE CARD ITSELF OR THIS INFORMATION FROM THE CARD SPEAKS FOR ITSELF AS TO WHEN IT WAS RECEIVED.

[2312] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. IS THE INFORMATION ON THE CODE 20 FORMS NORMALLY ALWAYS CORRECT?

MR. BURNS: OBJECTION, YOUR HONOR, IRRELEVANT AND BEYOND THE SCOPE OF THIS WITNESS.

OBVIOUSLY SHE MAY SEEK TO BE ACCURATE. OTHER THAN THAT WHETHER IT'S ULTIMATELY ACCURATE PARTICULARLY IF SHE HASN'T CONDUCTED SOME STUDY.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL WHEN YOU READ THIS PARTICULAR FORM 20 YOURSELF?

A. THE FIRST TIME I SAW IT, NO. I DON'T RECALL. THERE ARE A NUMBER OF CODE 20'S GENERATED EACH DAY. SO I CAN'T SAY AT WHAT PARTICULAR DAY OR TIME I FIRST SAW THE INFORMATION.

Q. BUT YOU DID READ IT PRIOR TO GIVING AN INTERVIEW?

A. YES, I DID.

Q. WAS THAT INTERVIEW BASED UPON THE CODE 20 FORM?

A. YES, IT WAS.

Q. AND IN ACCORDANCE WITH THE INFORMATION YOU HAVE RECEIVED THIS MORNING, ALL OF THE INFORMATION FROM HERE DOWN TO HERE, ALLOWING THE RECORD TO REFLECT I'M POINTING TO THE TOP OF THE PAGE DOWN TO APPROXIMATELY THE MIDDLE OF THE PAGE, WAS ALLEGEDLY GIVEN TO SOMEONE WITHIN [2313] YOUR OFFICE AT 1:30 A.M. ON SEPTEMBER THE 30TH OF 1982?

A. YES

DEFENDANT STANSBURY: YOUR HONOR, I BELIEVE THE PARTICULAR INFORMATION INVOLVED WITHIN THIS IS ALL THAT IS ON THE TAPE, PERHAPS THE NEWS MEDIA EDITED THE TAPE PRIOR TO RUNNING IT OR SOMETHING, BUT THE COURT HAS VIEWED THE TAPE.

THE COURT: SO WHAT ARE YOU TELLING ME?

DEFENDANT STANSBURY: I DON'T BELIEVE THAT THE REST OF THIS INFORMATION ON FURTHER DOWN CAME IN ON LATER DATES IS ON THE TAPE.

THEREFORE, AT THIS TIME, MS. MILLER HAS SPECIFIED THAT HER INTERVIEW WITH THE NEWS MEDIA WAS BASED UPON THIS INFORMATION WHICH WAS RECEIVED AT 1:30 A.M. OF SEPTEMBER THE 30TH OF 1982, WHICH WAS APPROXIMATELY ONE HOUR AFTER I HAD BEEN ARRESTED AND I WOULD AT THIS TIME MOVE THAT I BE PERMITTED TO ALLOW MS. MILLER TO VIEW THE TAPE FOR THE PURPOSE OF PERHAPS JOGGING HER MEMORY.

THE COURT: AS TO WHAT?

DEFENDANT STANSBURY: AS TO THE ACTUAL WORDS THAT WERE SAID DURING THE COURSE OF HER INTERVIEW.

THE COURT: EXCUSE ME.

ARE YOU TALKING ABOUT THE COURSE OF THE INTERVIEW WITH THE REPORTER OR THE COURSE OF THE INTERVIEW WITH SOMEBODY FROM WHOM SHE RECEIVED THAT INFORMATION ON SEPTEMBER 28TH?

DEFENDANT STANSBURY: WITH THE INTERVIEW OF THE REPORTERS, YOUR HONOR, TO SEE IF THAT STATEMENT AT THAT [2314] POINT WAS ACCURATE IN HER MIND FROM WHAT SHE HAD READ FROM THE REPORTS AND THINGS OF THAT NATURE, YES.

MR. BURNS: YOUR HONOR, I'LL OBJECT.

THE COURT: I'M SORRY.

I DON'T UNDERSTAND WHAT YOU'RE ASKING, MR. STANSBURY. I DON'T UNDERSTAND WHY YOU WANT HER TO SEE THE TAPE.

MR. DAUGHERTY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES.

BY DEFENDANT STANSBURY:

Q. MS. MILLER, DO YOU RECALL SPECIFICALLY MAKING THE STATEMENT THAT THE INVESTIGATION OF THE OFFICERS WITHIN THE NEIGHBORHOOD LED – OF BALDWIN PARK WHERE I BELIEVE ROBYN JACKSON WAS SUPPOSED TO HAVE BEEN ALLEGEDLY ABDUCTED FROM, THAT QUESTIONING OF OTHER CHILDREN IN THE AREA HAD LED DIRECTLY TO MYSELF?

A. NO, I DON'T RECALL MAKING THAT STATEMENT.

ANY STATEMENT I MADE WOULD HAVE BEEN ABLE REFERRING TO THE INFORMATION THAT'S ON THE CODE 20 FORM.

Q. I DON'T SEE ANY SPECIFIC INFORMATION –

MR. BURNS: OBJECTION, YOUR HONOR, ARGUMENTATIVE IF IT'S A QUESTION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL SAYING ANYTHING ABOUT THE INVESTIGATION LEADING DIRECTLY TO ROBERT STANSBURY?

A. I DON'T RECALL, SIR.

[2315] Q. WOULD IT PERHAPS JOG YOUR MEMORY IF YOU WERE TO BE ABLE TO VIEW SUCH AN INTERVIEW?

A. PERHAPS, SIR.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, MAY I REFRESH THE WITNESS' MEMORY WITH THE VIDEOTAPE IN QUESTION?

THE COURT: WHAT IS IT YOU'RE TRYING TO REFRESH.

LET'S ASSUME, THE VIDEO TAPE, AND I DON'T RECALL. LET'S ASSUME THE VIDEOTAPE SAYS THAT THESE FACTS LED DIRECTLY TO ROBERT STANSBURY.

SHE'S INDICATED THAT THE ONLY INFORMATION SHE HAD IS WHAT YOU HAVE IN FRONT OF YOU. SHE MAY HAVE CHARACTERIZED THAT EVIDENCE AS DIRECTED TO, BUT –

DEFENDANT STANSBURY: THAT IS WHAT I'M ATTEMPTING TO FIND OUT, YOUR HONOR.

AT THE SAME TIME AS I BELIEVE MR. BURNS HAS POINTED OUT, WHEN MS. MILLER READ THIS, THOSE WORDS WERE NOT IN THERE.

THE COURT: I DON'T BELIEVE THEY ARE.

MR. BURNS: THAT'S RIGHT, YOUR HONOR. IT'S IRRELEVANT BECAUSE THEY WEREN'T.

DEFENDANT STANSBURY: AND WHAT IS RELEVANT IS THE FACT, IF THEY WEREN'T, HOW DID -

THE COURT: IN THE INTEREST OF TIME, I'M GOING TO ALLOW HER TO VIEW THE TAPE. I THINK THAT TAKES A MINUTE AND A HALF, I BELIEVE I'LL SAVE 20 MINUTES OF ARGUMENT BY ALLOWING HER TO LOOK AT THE TAPE.

MR. BENART, COME OVER AND TURN THE TAPE ON.

[2316] THE CLERK: UNFORTUNATELY, YOUR HONOR, I THINK IT WAS REWOUND.

THE COURT: I'M GOING DO DIRECT THAT MS. MILLER TAKE A SEAT CLOSE TO THE TAPE OF THE TV MACHINE SO SHE CAN VIEW THE TAPE AND WE'LL CONTINUE WITH THE EXAMINATION.

LET'S GO OFF THE RECORD WHILE HE'S DOING THAT.

(THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

(VIDEOTAPE PLAYED.)

THE COURT: ALL RIGHT.

THE RECORD SHOULD REFLECT THAT THE WITNESS HAS HAD AN OPPORTUNITY TO VIEW THE TAPE OF THAT TELEVISION BROADCAST CAST FOR

THE PURPOSE OF THE NEXT QUESTION. THE WITNESS DID USE THE WORD ON THE TAPE, THAT THE INFORMATION DEVELOPED WHILE THE OFFICERS INVESTIGATED LED DIRECTLY TO ROBERT STANSBURY.

MR. STANSBURY IF YOU HAVE OTHER QUESTIONS YOU WISH TO ASK?

BY DEFENDANT STANSBURY:

Q. I PRESUME YOU DO RECALL THAT INTERVIEW AT THIS TIME?

A. YES, I DO.

Q. SINCE THOSE WORDS WERE NOT CONTAINED WITHIN THE NOTES YOU HAVE OFFERED HERE, HAS IT PERHAPS REFRESHED YOUR MEMORY AS TO WHERE YOU OBTAINED ACCESS TO THOSE WORDS OR ANYTHING?

A. OBVIOUSLY MY INTERPRETATION OF WHAT I READ THERE.

[2317] Q. MA'AM?

A. MY INTERPRETATION OF WHAT I READ ON THE CODE 20 FORM.

Q. COULD YOU PERHAPS REREAD YOUR NOTES HERE CONCERNING THAT PERIOD OF TIME?

A. CERTAINLY.

Q. JUST GO OVER THEM AND REFRESH YOUR MEMORY THERE.

(PAUSE.)

Q. DO YOU SEE ANY PLACE –

THE COURT: YOU'VE ASKED HER TO READ IT. SO GIVE HER AN OPPORTUNITY.

THE WITNESS: I'VE REVIEWED IT.

THE COURT: FINE. THANK YOU

YOU MAY PROCEED, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. DO YOU SEE ANYTHING THERE THAT SAYS THAT THE INVESTIGATION LED DIRECTLY TO ME AT THAT TIME?

A. NO.

IT'S NOT INCLUDED IN THIS INFORMATION.

Q. IT'S NOT.

IS THE INFORMATION INCLUDED IN THERE THAT THE – AFTER SPEAKING WITH CHILDREN IN THE AREA, THAT THE INVESTIGATION HAD LED DIRECTLY TO ME?

A. NO.

IT SAYS THAT –

MR. BURNS: OBJECTION, YOUR HONOR. SHE'S ANSWERED THE QUESTION.

[2318] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. I BELIEVE THAT YOU WERE ABOUT TO MAKE A COMMENT THAT SAID SOMETHING ELSE.

COULD YOU PLEASE TELL US WHAT YOU WERE ABOUT TO SAY?

MR. BURNS: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: THE CODE 20 FORM SAYS THAT "STANSBURY OPERATED –" "RENTED AND OPERATED AN ICE CREAM TRUCK IN BALDWIN PARK, CAME TO THE ATTENTION OF HOMICIDE DETECTIVES AFTER OTHER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED."

Q. SO IT DOES SAY AFTER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED?

A. YES.

Q. WAS THAT IN THE REPORT DATED FOR 1:30 SEPTEMBER 29TH OF 1982?

A. SEPTEMBER 30TH, 1982.

Q. THANK YOU.

AND YOU JUST ASSUMED THAT THAT HAD CAUSED THE INVESTIGATION TO LEAD DIRECTLY TO ME?

A. THAT WAS MY INTERPRETATION.

Q. BUT YOU HAD HAD NO CONVERSATIONS WITH ANY OF THE OFFICERS THAT YOU RECALL?

A. NO, I DID NOT.

DEFENDANT STANSBURY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

[2319] MR. BURNS: NO QUESTIONS.

THE COURT: THANK YOU, OFFICER. YOU MAY STEP DOWN. YOU ARE FREE TO GO.

THE WITNESS: THANK YOU.

THE COURT: GENTLEMEN, WHAT NEXT?

THE CLERK: EXCUSE ME, JUST A MOMENT, YOUR HONOR.

MR. BURNS: YOUR HONOR, MAY I HAVE A FEW MOMENTS?

THE COURT: YES.

(TELEPHONE INTERRUPTION.)

MR. BURNS: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, MR. STANSBURY?

DEFENDANT STANSBURY: ONE MOMENT, YOUR HONOR.

YOUR HONOR, AT THIS TIME I WOULD PREFER IN ORDER, IN AN EFFORT TO SPEED THINGS UP A LITTLE BIT PERHAPS, TO ALLOW MR. ROBUSTO TO EXAMINE THE NEXT WITNESS AFTER THE CURRENT DIAGRAMS ARE REMOVED FROM THE BOARD, PLEASE.

THE COURT: MR. ROBUSTO, WOULD YOU BE – TOM, WOULD YOU FOLD THOSE OVER, PLEASE.

AND THE NEXT WITNESS IS GOING TO BE WHO, PLEASE?

DEFENDANT STANSBURY: OFFICER GRAY.

MR. DAUGHERTY: CATHY GRAY.

THE COURT: I ASSUME THIS IS GOING TO BE PRETTY SHORT.

MR. DAUGHERTY: I THINK HE'S AFRAID TO HAVE ME DO IT.

(THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

[2320] THE COURT: WE'RE BACK ON THE RECORD.

WOULD YOU RISE TO BE SWORN, PLEASE.

CATHY GRAY, +

A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: PLEASE, RAISE YOUR RIGHT HAND.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS STAND AND STATE YOUR NAME FOR THE RECORD AND SPELL YOUR FIRST AND LAST NAMES.

THE WITNESS: CATHY GRAY, C-A-T-H-Y, G-R-A-Y.

DIRECT EXAMINATION +

BY MR. ROBUSTO:

Q. OFFICER GRAY, BY WHOM ARE YOU EMPLOYED AT THE PRESENT TIME?

A. CITY OF BALDWIN PARK.

Q. IN WHAT CAPACITY?

A. AS A RESERVE OFFICER AND A DISPATCHER.

Q. AND WERE YOU SO EMPLOYED ON SEPTEMBER 29, 1982?

A. YES, I WAS.

[2321] Q. ON THAT PARTICULAR DATE, DID YOU HAVE AN OPPORTUNITY TO ARRIVE IN THE POMONA AREA?

A. YES.

Q. AND WITH WHOM?

A. SERGEANT HIGGENBOTHAM.

Q. ANYBODY ELSE?

A. LEE AND MULCAHY.

Q. WHAT WAS YOUR PURPOSE?

A. TO GO LOOK FOR AN ADDRESS.

Q. WHAT KIND OF AN ADDRESS WERE YOU LOOKING FOR?

A. A TRAILER PARK ON MISSION.

Q. AND YOU WERE LOOKING FOR AN ADDRESS FOR SOMEBODY?

A. UH-HUH.

Q. AND WHO WAS THAT FOR?

A. PARDON ME?

Q. FOR WHOM?

A. FOR WHOM WAS I LOOKING FOR THE ADDRESS FOR?

Q. YES.

A. ONE OF THE HOMICIDE INVESTIGATORS.

Q. DO YOU KNOW THAT INVESTIGATOR'S NAME?

A. HIS FIRST NAME IS THOMAS. I DON'T RECALL HIS LAST NAME.

Q. WOULD THAT BE INVESTIGATOR JOHNSTON?

A. YES.

Q. AND YOU WERE LOOKING FOR A PARTICULAR PERSON AT THAT TIME?

A. YES.

[2322] Q. AND DO YOU KNOW THE NAME OF THAT PERSON?

A. MR. STANSBURY.

Q. DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY AT THE TIME THAT YOU ARRIVED IN POMONA?

A. NO.

Q. HAD YOU HAD A CONVERSATION WITH ANY OF THE INVESTIGATORS INVESTIGATING MR. STANSBURY?

A. NO.

Q. HAD YOU HAD ANY CONVERSATION WITH LIEUTENANT JOHNSTON ABOUT MR. STANSBURY AT ALL?

A. NO.

Q. HAD YOU HAD A CONVERSATION WITH MR. BILL PATTERSON ABOUT MR. STANSBURY?

A. NO.

Q. HAD YOU HAD AN INVESTIGATION OR HAD YOU HAD A CONVERSATION WITH A CHUCK RIORDAN ABOUT MR. STANSBURY?

A. NO.

Q. DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY AT ALL PRIOR TO GOING TO POMONA?

A. NOT TO MY KNOWLEDGE.

Q. ARE YOU SAYING –

A. I DIDN'T KNOW ANYTHING.

Q. DO YOU KNOW WHAT TIME YOU ARRIVED IN POMONA?

A. AT THE TRAILER PARK?

Q. YES, MA'AM.

A. ABOUT 11.

Q. 11?

A. APPROXIMATELY, 11:00 P.M.

[2323] Q. AND YOU WERE WITH MR. HIGGENBOTHAM?

A. YES, I WAS.

Q. AND THERE WAS ANOTHER CAR CARRYING JOE LEE AND MULCAHY?

A. YES.

Q. AND YOU ARRIVED AT THIS PARTICULAR TRAILER PARK?

A. YES.

Q. WHO WAS YOUR SUPERVISOR AT THAT POINT IN TIME?

A. SERGEANT HIGGENBOTHAM.

Q. DID YOU HAVE INSTRUCTIONS FROM HIGGENBOTHAM?

A. AS TO?

Q. AS TO WHAT YOU WERE GOING TO DO WHEN YOU ARRIVED AT THE TRAILER PARK?

A. WE WERE SUPPOSED TO SEE IF A MR. STANSBURY WAS THERE AND ASK HIM TO COME DOWN TO POMONA POLICE DEPARTMENT.

Q. AND DID HE GIVE YOU ANY OTHER INSTRUCTIONS?

A. NO.

Q. NO INSTRUCTIONS?

A. I DON'T KNOW WHAT YOU'RE REFERRING TO.

Q. WELL, PRIOR TO THE ARRIVAL AT THE TRAILER PARK, DID HE GIVE YOU ANY INSTRUCTIONS AT ALL?

A. NO.

Q. WERE YOU DRIVING THE VEHICLE THAT YOU ARRIVED THERE?

A. NO.

[2324] Q. YOU PARKED THE CAR?

A. HE DID.

Q. AND YOU EXITED THE VEHICLE?

A. YES.

Q. WHAT DID YOU DO?

A. WALKED UP TO THE TRAILER. WALKED THROUGH THE TRAILER PARK UP TO THE TRAILER.

Q. DID YOU GO RIGHT UP NEXT TO THE TRAILER?

A. NO.

Q. HOW FAR AWAY FROM THE TRAILER WERE YOU, APPROXIMATELY?

A. ABOUT 10 FEET.

Q. WERE YOU IN UNIFORM?

A. NO, I WAS NOT.

Q. WERE YOU WORKING UNDER COVER THAT DAY?

A. YES, I WAS.

Q. YOU WERE ARMED?

A. YES, I WAS.

Q. WAS YOUR WEAPON OUT OF WHERE YOU KEEP IT?

A. YES.

Q. WAS THAT AT ANYBODY'S INSTRUCTION?

A. NO.

Q. YOU DID THAT ON YOUR OWN?

A. YES.

Q. OKAY.

DID YOU DO THAT AFTER OBSERVING THE OTHER OFFICERS DO THAT?

A. I DON'T RECALL SEEING ANYBODY ELSE DO IT.

[2325] Q. SO YOU DID THAT UPON YOUR OWN THINKING PROCESS?

A. YES.

Q. ALL RIGHT.

DID YOU APPROACH – DID YOU MAKE CONTACT WITH MR. STANSBURY PERSONALLY?

A. NO.

Q. WHO DID THAT?

A. LEE.

Q. MR. LEE WENT TO THE DOOR?

A. YES, HE DID.

Q. AND HIS WEAPON WAS DRAWN ALSO?

A. I DON'T RECALL.

Q. YOU WERE BEHIND LEE?

A. YES.

Q. WAS THERE ANYBODY ELSE IN FRONT OF YOU, ANY OTHER OFFICERS BESIDES LEE?

A. NOBODY WAS ACTUALLY IN FRONT OF ME.

Q. WELL, DID LEE HAVE HIS BACK TO YOU?

A. HE WAS STAND STANDING SIDEWAYS, FACING THE DOOR.

Q. WAS THERE ANY OTHER OFFICERS CLOSER TO THE DOOR BESIDES MR. LEE AND YOU?

A. YES, MULCAHY.

Q. AND WHERE WAS HIGGENBOTHAM?

A. NEXT TO ME.

Q. AND WAS HIS WEAPON DRAWN?

A. HE HAD A WEAPON. BUT I WASN'T PAYING [2326] ATTENTION TO HIM.

Q. WILL YOU APPROACH THE BLANK PIECE OF PAPER THERE AND DRAW A DIAGRAM OF THE TRAILER AND THE LOCATION THAT THE OFFICERS WERE?

A. YOU WANT ME TO WRITE THE NAMES.

Q. FOR THE RECORD IT APPEARS YOU HAVE DRAWN A RECTANGLE TYPE BOX; IS THAT CORRECT?

A. YES.

Q. WOULD YOU LABEL THAT TRAILER, PLEASE. IT APPEARS THAT YOU HAVE DRAWN WHAT I'M GOING TO ASSUME IS A FRONT DOOR?

A. YES.

Q. WOULD YOU LABEL THAT FRONT DOOR, PLEASE.

A. IT ALSO APPEARS THAT YOU HAVE DRAWN FOUR X'S?

A. YES.

Q. WHICH I'M ASSUMING REPRESENTS THE OFFICERS THAT ARRIVED AT THE TRAILER.

IS THAT CORRECT?

A. YES.

Q. WOULD YOU PUT AN H NEXT TO THE X THAT REPRESENTS SERGEANT HIGGENBOTHAM. AND WOULD YOU PUT AN L NEXT TO THE X THAT REPRESENTS JOE LEE. AND WILL YOU PUT AN M NEXT TO THE X THAT REPRESENTS OFFICER MULCAHY.

AND WILL YOU PUT A G THAT REPRESENTS OFFICER GRAY.

AND WILL YOU INDICATE ON THE DIAGRAM WHERE THE CAR THAT YOU ARRIVED IN WAS PARKED PRIOR TO YOUR EXITING SAID VEHICLE.

[2327] DID YOU NOTICE WHERE THE OTHER VEHICLE PARKED?

A. RIGHT IN FRONT. WE WERE BEHIND.

Q. THANK YOU.

YOU MAY BE SEATED. THANK YOU.

COULD YOU HEAR WHAT MR. LEE SAID TO – STRIKE THAT.

MR. LEE MADE CONTACT WITH THE FRONT DOOR.

IS THAT CORRECT?

A. YES, HE DID.

Q. DID SOMEBODY RESPOND TO THE FRONT DOOR?

A. YES.

Q. AND DID YOU HEAR WHAT MR. LEE SAID?

A. I REMEMBER HE IDENTIFIED HIMSELF AS BALDWIN PARK POLICE AND SAID HE'D LIKE TO TALK – ASK FOR MR. STANSBURY, I DON'T REMEMBER THE EXACT WORDING.

BUT ASKED FOR – IF A MR. STANSBURY WAS THERE. HE SAID HE WAS MR. STANSBURY AND

ASKED HIM TO COME DOWN TO POMONA POLICE DEPARTMENT.

BUT I CAN'T REMEMBER THE EXACT CONVERSATION.

Q. DID MR. LEE INDICATE TO MR. STANSBURY WHY HE WAS BEING REQUESTED TO GO TO THE POMONA POLICE DEPARTMENT?

A. I DON'T RECALL.

Q. YOU RECALL ANY OTHER WORDS BEING EXCHANGED BETWEEN MR. STANSBURY AND MR. LEE?

A. I REMEMBER HIM ASKING HIM TO COME DOWN TO POMONA POLICE DEPARTMENT AND HE SAID SURE, OKAY. AND THAT WAS IT.

[2328] Q. WAS THERE ANY WORDS ABOUT MR. STANSBURY HAVING TRANSPORTATION TO THE POMONA FACILITY?

A. I DON'T RECALL.

Q. DO YOU KNOW HOW MR. STANSBURY ARRIVED AT THE POMONA FACILITY?

A. YES. HE ROLLED WITH OFFICER LEE.

Q. HE DROVE WITH OFFICER LEE?

A. HE ROLLED WITH OFFICER LEE.

Q. AND YOU WERE NOT IN THAT CAR?

A. I WAS NOT.

Q. NOW, THIS WAS AT 11:00 P.M. APPROXIMATELY?

A. APPROXIMATELY.

Q. HOW WAS THE LIGHTING AT THE TRAILER AT THE TIME THAT YOU ARRIVED I MEAN, WAS THERE ANY ARTIFICIAL LIGHTING?

A. AT THE TRAILER, I DON'T REMEMBER. BUT WALKING UP TO IT IT WAS DARK.

Q. DID YOU HAVE ANY PROBLEM SEEING MR. STANSBURY WHEN HE CAME TO THE DOOR?

A. NO.

Q. NOTHING WAS BLOCKING YOUR VIEW OF MR. STANSBURY?

A. NO.

Q. PRIOR TO YOUR ARRIVAL AT THIS LOCATION AT APPROXIMATELY 11:00 P.M., DID YOU HAPPEN TO BE AT A DIFFERENT LOCATION IN POMONA?

A. YES.

Q. AND WHAT WAS YOUR REASON FOR BEING THERE?

[2329] A. WENT TO GO LOOK FOR AN ADDRESS AND THAT'S WHERE WE MET HOMICIDE.

Q. OKAY.

YOU APPARENTLY HAD INSTRUCTIONS TO LOOK FOR ANOTHER ADDRESS PRIOR TO LOOKING FOR MR. STANSBURY?

A. WENT TO THE PREVIOUS ADDRESS AND FROM THERE IS WHEN WE WENT TO THE TRAILER PARK IN POMONA.

Q. DID YOU HAVE ANY CONTACT WITH ANY HOMICIDE INVESTIGATORS AT THE PREVIOUS ADDRESS?

A. MYSELF, NO.

Q. OKAY.

DID YOU OBSERVE ANY HOMICIDE INVESTIGATORS AT THE PREVIOUS ADDRESS?

A. YES.

Q. DO YOU KNOW WHAT THE PREVIOUS ADDRESS WAS?

A. NO, I DON'T.

Q. WAS IT DUDLEY IN POMONA, DUDLEY STREET IN THE CITY OF POMONA?

A. I BELIEVE THAT WAS IT, BUT HONESTLY I CAN'T SAY FOR SURE.

Q. YOU WERE WITH SERGEANT HIGGENBOTHAM?

A. YES, I WAS.

Q. WHAT TIME DID YOU COME ON, YOUR SHIFT THIS PARTICULAR DAY?

A. I DON'T RECALL. I BELIEVE IT WAS EITHER FIVE OR SIX.

Q. WOULD THAT BE 5:00 P.M.?

A. YES.

[2330] Q. SO YOU WERE WORKING A NORMAL SHIFT AT THIS POINT IN TIME?

A. I WAS CALLED IN TO WORK.

Q. WERE YOU CALLED IN - WERE YOU INFORMED WHY YOU WERE CALLED IN TO WORK?

A. YES.

Q. AND WHAT REASON?

A. IT WAS TO WORK A STAKE OUT ON A NARCOTICS SURVEILLANCE.

Q. THEN WHEN YOU GOT TO WORK, YOU DID SOMETHING DIFFERENT?

A. YES.

Q. YOU STARTED INVESTIGATING THE MURDER OF ROBYN JACKSON?

MR. BURNS: OBJECTION, YOUR HONOR, AS TO THE TERM INVESTIGATING THE TERM MURDER OF ROBYN JACKSON. I BELIEVE THE WITNESS HAS TESTLFIED AS TO WHAT SHE DID.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I CAME IN TO WORK A SPECIAL DETAIL AND WHEN I GOT THERE I WAS ADVISED BY SERGEANT HIGGENBOTHAM I WAS GOING TO BE ASSISTING HIM.

WE WERE GOING TO BE ASSISTING HOMICIDE.

MR. ROBUSTO: OKAY.

BY MR. ROBUSTO:

Q. DID MR. HIGGENBOTHAM TELL BUT ABOUT A MURDER THAT HAD TAKEN PLACE?

A. I WAS TOLD THAT WE HAD A MISSING JUVENILE [2331] THAT TURNED INTO A 187.

Q. SO YOU WERE ASSISTING HOMICIDE AT THAT POINT IN TIME?

A. YES.

Q. YOUR FIRST ACT IN ASSISTING HOMICIDE WAS TO GO TO THIS RESIDENCE, THE PREVIOUS RESIDENCE, THE RESIDENCE PRIOR TO MR. STANSBURY?

A. YES.

Q. DID YOU HAVE ANY INFORMATION FROM ANYBODY PRIOR TO ARRIVING AT MR. STANSBURY'S RESIDENCE ABOUT THE CASE?

A. NO.

[2332] Q. HAVE YOU REVIEWED ANY POLICE REPORTS OR TALKED TO ANYBODY ABOUT THE CASE?

A. NO.

MR. ROBUSTO: I HAVE NOTHING FURTHER, YOUR HONOR.

MR. BURNS: NO QUESTIONS.

THE COURT: THANK YOU.

OFFICER, YOU MAY STEP DOWN. YOU ARE FREE TO GO.

MR. DAUGHERTY: YOUR HONOR, I WONDER IF WE COULD HAVE A BRIEF CONFERENCE WITH MR. STANSBURY BEFORE PROCEEDING.

THE COURT: YOU MAY.

MR. DAUGHERTY: YOUR HONOR, IF I MAY SPEAK TO MR. BENART OUTSIDE.

THE COURT: YES.

(RECESS.)

MR. DAUGHERTY: IN THIS MOTION, YOUR HONOR, IT'S MR. STANSBURY'S DESIRE – WE HAVE ONE ADDITIONAL WITNESS THAT HE FEELS, CONSIDERING ALL THE TESTIMONY WE'VE HAD IN THE LAST COUPLE OF DAYS, WOULD BE HELPFUL TO THE COURT AND RELEVANT TO THE ISSUE OF THE MIRANDA HEARING.

THAT IS A JAILER FROM THE POMONA POLICE DEPARTMENT FACILITY. NO SPECIFIC JAILER, ANY JAILER WHO IS FAMILIAR WITH THE FACILITY IN 1982, SEPTEMBER OF 1982, WHO CAN DESCRIBE FOR THE COURT WHAT BOTH THE JAIL AND THE UPSTAIRS INTERVIEW ROOM FACILITIES CONSIST OF.

WHAT WE WOULD DO, IN THE INTEREST OF TIME, IS REQUEST FROM MR. BURNS HIS COOPERATION IN PERHAPS, HAVING [2333] TOMORROW MORNING, HAVING SOME REPRESENTATIVE FROM POMONA POLICE DEPARTMENT COME OVER AND TESTIFY.

THE COURT: TOMORROW FRIDAY, OR MONDAY?

MR. DAUGHERTY: I GUESS IT WOULD HAVE TO BE MONDAY.

THE COURT: I WOULD NOT ANTICIPATE THAT TESTIMONY TO BE WHAT, MORE THAN FIVE, TEN MINUTES.

MR. BURNS: I THINK THE TESTIMONY IS TOTALLY IRRELEVANT AT THIS POINT IN TIME. I DON'T UNDERSTAND WHAT A GENERAL JAILER CAN DO.

THE COURT: I WOULD SUSPECT IT'S TO BOLSTER THE ARGUMENT WE'VE GOT SECURITY AND NON-SECURITY INTERVIEW ROOMS.

THEY PUT HIM IN A SECURITY ONE, AND MR. YUSUF IN A NON-SECURITY, WHICH WOULD INDICATE THAT –

MR. BURNS: THAT'S CLEAR, YOUR HONOR.

I SUSPECT THAT'S WHAT THE ARGUMENT IS.

BUT THE RECORD IS ALSO CLEAR THAT'S WHAT THEY DID. I KNOW IT; THE COURT KNOWS IT. IT'S ON THE RECORD.

A PERSON TELLING ME WHERE VARIOUS ROOMS IN THE POMONA JAIL ARE LOCATED HAS ABSOLUTELY NOTHING TO DO WITH THE RELEVANT ISSUE AT THIS POINT IN TIME.

CERTAINLY THAT JAILER WOULD NOT HAVE ANY IDEA AS TO WHAT IT SPECIFICALLY DID ON THE DAY IN QUESTION.

THE COURT: IS THAT THE THRUST OF THE ARGUMENT?

MR. DAUGHERTY: I THINK THAT'S THE GENERAL THRUST OF THE ARGUMENT.

ALTHOUGH A LITTLE MORE SPECIFIC THAN THAT. NOT SIMPLY WHERE ARE THE INTERVIEW ROOMS LOCATED.

[2334] FOR INSTANCE, ARE THE INTERVIEW ROOMS IN THE JAIL SECTION; ARE THEY LOCKED? DO THEY HAVE LOCKING DOORS? ARE THEY USED TO INTERVIEW WITNESSES? ARE THEY USED TO INTERVIEW PEOPLE WHO ARE ARRESTED WHO ARE SUSPECTS. ARE THE ONES UPSTAIRS USED FOR WITNESSES, ORDINARILY, THAT KIND OF THING.

MR. BURNS: THAT WHOLE LINE OF QUESTIONING IS TOTALLY IRRELEVANT.

NORMAL USE BY THE POMONA POLICE OFFICERS IN THEIR OWN FACILITY IS TOTALLY IRRELEVANT TO WHAT LIEUTENANT JOHNSTON DID ON THAT DAY.

THAT WAS THEIR FIRST TIME THERE. WHAT THEIR USES ARE, WHAT THEIR MOTIVES WERE. WE'VE GONE FAR AFIELD ON THIS CASE.

NOW, I KNOW IT'S GOING TO TAKE A LONG TIME, AND I'VE BEEN ATTEMPTING TO BE MORE

THAN PATIENT IN OTHER AREAS, BUT THIS IS JUST RIDICULOUS.

THAT'S MY CHARACTERIZATION AND MY ATTITUDE, OBVIOUSLY.

DEFENDANT STANSBURY: I WOULD SPECIFY FOR THE RECORD, YOUR HONOR, THAT NUMBER 1, SUCH AN OFFICER WHO WAS FAMILIAR WITH THE BASIC POLICE DEPARTMENT WITHIN POMONA WOULD QUITE CONCEIVELY BE ABLE TO TESTIFY THAT THE INTERROGATION ROOMS ARE LOCATED WITHIN THE GENERAL OFFICE OF THE DETECTIVE BUREAU, AND THAT IT IS A NUMBER OF SMALL ROOMS LOCATED ALONG ONE SIDE OF THE WALL; THAT THE DOOR TO THE DETECTIVES OFFICES IS AVAILABLE FROM THE PUBLIC STAIRWAY.

[2335] THAT ONCE YOU UNLOCK THE DOOR LEADING INTO THE AREA WHERE THE DETECTIVES OFFICES ARE, I SHOULD SAY THE DETECTIVE OFFICE WITH NUMEROUS DESKS WITHIN THAT ONE LARGE OFFICE, AND THAT THERE ARE NO DOORS ON THE INTERVIEW ROOMS, THEREIN.

THAT ONCE AN INDIVIDUAL GETS PASSED THAT ONE DOOR, WHICH HAS ALREADY BEEN ASCERTAINED THAT IT – AT LEAST ONE WAS LOCKED. THAT AN INDIVIDUAL COULD SIMPLY WALK OUT.

WHEREAS IN THE DETENTION AREA ITSELF, QUITE OBVIOUS THAT THERE ARE LOCKED DOORS.

HOW MANY LOCKED DOORS ARE THERE? HOW HARD WOULD IT BE FOR ME TO HAVE WALKED OUT?

WOULD ONE OF THE POMONA POLICE OFFICERS HAVE ALLOWED ME TO LEAVE HAD I SO DESIRED WITHOUT SPECIFIC INSTRUCTION FROM DETECTIVE JOHNSTON UNDER THEIR NORMAL PROCEDURES.

THERE ARE NUMEROUS THINGS THAT THE OFFICER COULD VERY WELL CLARIFY IN THIS ENTIRE MATTER.

MR. BURNS: EVERYTHING MR. STANSBURY HAS SAID IS TOTALLY IRRELEVANT TO THE ISSUE.

EVEN ASSUMING THE OFFICER CAME IN AND TESTIFIED TO THOSE THINGS, AS TO THE LAST POINT, DETECTIVE JOHNSTON ALREADY TESTIFIED IF MR. STANSBURY WANTED TO LEAVE AT ANY TIME, HE WOULD HAVE GOT HIM OUT OF THERE.

WHATEVER POMONA'S NORMAL PROCEDURES ARE, HOW MANY DOORS THEY MAY HAVE NEEDED TO ACCOMPLISH THE ACT IS NOT RELEVANT.

[2336] THE COURT: IS THAT THE LAST WITNESS YOU'RE GOING TO CALL?

MR. DAUGHERTY: YES.

THE COURT: DO YOU EXPECT TO CALL A JAILER WHO IS THERE AT THE TIME WHO WOULD TESTIFY?

MR. DAUGHERTY: NOT WHO WAS PHYSICALLY PRESENT AT THE TIME MR. STANSBURY WAS THERE.

BUT I THINK SOMEONE WHO AT LEAST WAS EMPLOYED IN SEPTEMBER OF 1982, SO THAT HE

WOULD KNOW WHAT THE FACILITIES WERE LIKE THEN.

THE COURT: HOW LONG DO YOU EXPECT THAT IT WOULD TAKE TO PRESENT THIS EVIDENCE?

DEFENDANT STANSBURY: I BELIEVE THAT WOULD PRIMARILY DEPEND UPON MR. BURNS, YOUR HONOR, BECAUSE OF THE FACT THAT I BELIEVE THAT AS AN EXAMPLE, IF MR. DAUGHERTY OR MR. –

THE COURT: GIVE ME AN ESTIMATE.

MR. DAUGHERTY: I WOULD SAY I WOULD ESTIMATE PERHAPS 15 MINUTES TOTAL, INCLUDING CROSS-EXAMINATION.

THE COURT: ALL RIGHT, I'LL ALLOW IT.

10:30, MONDAY MORNING.

IT'S YOUR RESPONSIBILITY TO GET THAT PERSON HERE.

I WOULD LIKE TO CONCLUDE WITH THAT EVIDENCE AND THEN ARGUE ON THIS MOTION.

MR. BURNS: I BELIEVE WE'RE DOING THE PHOTO I.D. ISSUES ARE THE NEXT MOTIONS WE'RE PLANNING ON DOING.

[2337] MR. DAUGHERTY: WHEN THE COURT SAYS "OUR RESPONSIBILITY TO GET THAT PERSON HERE," WE HAD ALSO REQUESTED THE COOPERATION AND ASSISTANCE OF MR. BURNS.

THE REASON FOR THAT BEING IS THAT THERE IS NO ONE PARTICULAR INDIVIDUAL WE WOULD SUBPOENA.

I DON'T WISH TO SUBPOENA TEN JAILERS.

IT MIGHT BE EASIER FOR MR. BURNS THROUGH A PHONE CALL TO OBTAIN COOPERATION FROM THAT DEPARTMENT AND TO MAKE CERTAIN THAT HE CAN GET SOMEONE OVER HERE THAT HAS BEEN EMPLOYED BY THE DEPARTMENT FOR A COUPLE OF YEARS.

MR. BURNS: I'LL ATTEMPT TO CALL TO SEE IF THEY HAVE SOME JAILER STILL WORKING.

I CANNOT AT THIS TIME ON THE RECORD SAY I WOULD BE SUCCESSFUL TO LOCATE SUCH A WITNESS.

I'LL LOCATE SOMEONE AND ASK THEM TO COME OVER HERE.

THAT'S THE BEST I CAN DO.

THE COURT: I WISH TO CONCLUDE THIS MOTION MONDAY MORNING.

SINCE WE'RE DOWN TO THAT, I WOULD LIKE TO HEAR ARGUMENT. I DON'T WANT TO PUT IT OVER ANOTHER DAY TO PRODUCE SUCH A WITNESS.

SO I WOULD RECOMMEND YOU CONTACT MR. BURNS SOMETIME TOMORROW AND FIND OUT WHETHER HE'S SUCCESSFUL.

IF NOT, YOU'RE GOING TO HAVE TO TAKE WHATEVER STEPS ARE NECESSARY. AS LONG AS

WE'RE TALKING ABOUT SOMEWHERE IN THE NEIGHBORHOOD OF 15 MINUTES, I'LL LISTEN TO THAT TESTIMONY, AND I'LL LISTEN TO WHATEVER TESTIMONY [2338] IS AVAILABLE AT THAT TIME.

IF ANYBODY HAS SOME OTHER WITNESS THAT YOU THINK HAS SOME RELEVANT EVIDENCE, I CERTAINLY WILL LISTEN TO IT TOO.

IT SOUNDS LIKE WE'RE DOWN TO THE LAST FEW MINUTES.

I WOULD LIKE TO HEAR ARGUMENT. AND I WOULD LIKE TO RULE, WHATEVER WE'RE GOING TO DO WITH THIS MOTION AND GO ON TO THE NEXT MOTION.

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME I WOULD LIKE TO BRING TO THE COURT'S ATTENTION WE STILL HAVE THREE DOCUMENTS UPON THE BOARD.

I WOULD LIKE TO HAVE THOSE ENTERED AS EXHIBITS FOR THE DEFENSE AT THIS TIME, D-1, D-2 AND D-3.

MR. BURNS: NO OBJECTION.

THE COURT: IT SHALL BE RECEIVED.

THE CLERK: IS THIS FOR IDENTIFICATION?

THEY HAVE BEEN OFFERED AND RECEIVED.

THERE WAS NO OBJECTION ON THE PART OF THE PEOPLE, AND I HAVE RECEIVED THEM.

(RECEIVED EDID: DFT'S D-1, D-2 & D-3, DRAWINGS)

(AT 4:15 P.M., AN ADJOURNMENT WAS TAKEN UNTIL MONDAY, NOVEMBER 5, 1984, AT 10:30 A.M.)

[2339] THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, AND MR. STANSBURY ARE PRESENT.

THE COURT: IS THERE ANY OTHER EVIDENCE THAT YOU WISH TO BRING FORTH ON THIS MOTION?

MR DAUGHERTY: YES. MR. STANSBURY WISHES TO CALL ONE ADDITIONAL WITNESS ON THIS MOTION.

HE'S PRESENT IN COURT, A SERGEANT ELOFSON OF THE POMONA POLICE DEPARTMENT.

THE COURT: SERGEANT, STEP FORWARD PLEASE.

RAISE YOUR RIGHT HAND TO BE SWORN.

GARY SHEA ELOFSON, +

A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES A [sic] FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GAVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS STAND.

STATE YOUR NAME FOR THE RECORD AND SPELL YOUR [2340] LAST NAME.

THE WITNESS: GARY SHEA, S-H-E-A, ELOFSON, E-L-O-F-S-O-N.

THE COURT: YOU MAY PROCEED, MR. STANSBURY.

DIRECT EXAMINATION +

BY MR. DAUGHERTY:

Q. SERGEANT ELOFSON, PLEASE STATE YOUR OCCUPATION AND ASSIGNMENT?

A. POLICE SERGEANT FOR THE CITY OF POMONA, PRESENTLY ASSIGNED TO PATROL DIVISION.

Q. DURING THE MONTH OF SEPTEMBER, 1982, WERE YOU ALSO EMPLOYED BY THE POMONA POLICE DEPARTMENT?

A. YES, SIR. I WAS A JAIL SUPERVISOR.

Q. HAS THE CONDITION OF THE JAIL AREA OF POMONA POLICE DEPARTMENT CHANGED IN ANY SUBSTANTIAL WAY SINCE SEPTEMBER OF 1982?

A. NO, IT HAS NOT.

Q. CAN YOU DESCRIBE THE JAIL FACILITY ITSELF?

A. YES, I COULD. YOU WANT ME TO DRAW IT?

Q. JUST DESCRIBE IT?

A. AS YOU DRIVE IN, YOU CAN DRIVE IN ONLY ONE WAY, AND IT'S THROUGH THE POLICE PARKING LOT ON THE SOUTH END OF THE BUILDING, WHICH IS WHAT WE CALL A SALLY PORT, WHICH IS WHERE VEHICLES, POLICE VEHICLES CAN BE DRIVEN IN AND IN A ROLL CAGE, GOES BEHIND THE VEHICLE.

THE FRONT OF THE SALLY PORT, WHICH WOULD BE TOWARD THE FRONT OF THE POLICE CAR, IF YOU WERE DRIVING A [2341] POLICE CAR IN IS ALL GLASS.

THAT'S WHERE THE JAIL SUPERVISOR WOULD BE STATIONED.

IF THERE'S NO SUPERVISOR ON DUTY, IT WOULD BE A SENIOR JAILER.

THAT'S ACTUALLY THE CONTROL AREA FOR THE ENTIRE JAIL.

MOST OF IT IS ELECTRONIC, AND IT IS CONTROLLED FROM THERE.

ON THE WEST SIDE OF THE SALLY PORT IS THE STEEL ROLL DOORS, WHICH IS CONTROLLED BY THE SENIOR JAILER OR THE JAILERS.

THAT'S THE ONLY WALK-IN ENTRY FROM THE SOUTH SIDE.

ONCE YOU ENTER FROM THAT LOCATION, TO YOUR RIGHT WOULD BE THE JAIL CONTROL AREA, THE JAIL OFFICE.

TO THE LEFT WOULD BE A HALLWAY WHICH LEADS OUT THE WEST ENTRANCE OR EXIT OF THE JAIL.

STRAIGHT IN FRONT OF YOU, WHICH WOULD BE TO THE NORTH, WOULD BE A CORRIDOR WHICH LEADS TO INTERVIEW ROOMS.

AND AT THE FAR END OF THAT WOULD BE THE JUVENILE HOLDING CELLS.

ABOUT 15 TO 20 STEPS INTO THE JAIL IS WHERE THE BOOKING CAGE OR BOOKING COUNTERS BEGIN.

WHERE THE BOOKING COUNTERS BEGIN ON YOUR RIGHT-HAND SIDE IS WHERE THE INTERVIEW ROOMS BEGIN ON YOUR LEFT-HAND SIDE.

[2342] THERE'S THREE ROOMS THERE.

Q. THREE INTERVIEW ROOMS DOWNSTAIRS?

A. YES. ONE OF THEM IS CALLED AN INTERVIEW ROOM.

HOWEVER, IT'S MORE OF A HOLDING CELL.

IT DOESN'T HAVE TABLES. IT DOES HAVE A BENCH. AND THAT'S WHERE PRISONERS ARE PUT FOR PURPOSES OF THE STRIP SEARCH.

IT HAS A SMALL FLOOR DRAIN IF A PERSON HAS TO URINATE PRIOR TO BEING BOOKED, OR AFTER BEING BOOKED AND HASN'T BEEN HOUSED.

NORTH OF THAT IS AN INTERVIEW ROOM, ROOMS 121 AND 122.

Q. WHAT IS THE FUNCTION OF THOSE INTERVIEW ROOMS?

A. THOSE INTERVIEW ROOMS ARE FOR INTERVIEWING. NORMALLY, THEY'RE USED BY ATTORNEYS, OFFICERS, BAIL BONDS MEN.

Q. PRISONERS ARE PUT THERE PRIOR TO OR AFTER BOOKING UNTIL THEY CAN BE HOUSED.

THEY'RE USED FOR HOLDING OF A PERSON THAT IS NOT GOING TO BE BOOKED OR HAS BAIL BOND MONEY IN ROUTE OR ATTEMPTING TO OBTAIN BAIL MONEY.

BASICALLY, IT IS AN ALL-PURPOSE ROOM OTHER THAN FOR HOUSING.

Q. ARE THERE ALSO INTERVIEW ROOMS UPSTAIRS IN THE POLICE DEPARTMENT PROPER?

A. YES, THERE IS.

[2343] Q. HOW MANY OF THOSE ARE THERE?

A. THERE ARE TWO ROOMS, TWO INTERVIEW ROOMS.

Q. WHAT IS THE FUNCTION OF THOSE ROOMS?

A. THOSE SAME TYPE THING, INTERVIEWS ONLY.

THEY'RE TWO WAYS TO GET TO THOSE ROOMS.

THE NORMAL WAY IS ONCE YOU'VE RESPONDED TO THE SECOND FLOOR OF THE POLICE DEPARTMENT, THEY WOULD BE LOCATED INTO THE CENTER OF THE UPSTAIRS ON THE SOUTH END OF THE BUILDING.

THEY CAN BE ENTERED FROM THE CORRIDOR OR HALLWAY, WHICH LEADS FROM THE PUBLIC AREA BACK TOWARDS THE ADMINISTRATIVE OFFICES, WHICH WOULD BE TOWARDS THE SOUTH.

IF YOU'RE COMING IN THAT WAY, THE DOORS WOULD BE ON YOUR WEST SIDE. THEY ATTACH TO EACH OTHER. THEY'RE SEPARATED BY A WALL, BUT THEY'RE ATTACHED TO EACH OTHER.

THERE'S DOORWAYS ON THE EAST SIDE, WHICH WOULD BE THE DOORWAYS YOU WOULD ENTER FROM THAT HALLWAY, AND DOORS ON THE WEST SIDE OF THEM, WHICH COULD BE ENTERED FROM THE DETECTIVE BUREAU.

Q. ANY KIND OF – WHAT KIND OF LOCKING MECHANISM IS THERE ON THE INTERVIEW ROOMS THAT ARE ON THE JAIL PROPER DOWNSTAIRS?

A. ALL THE JAIL DOORS ARE STEEL. EVERY DOOR IN THE JAIL LEADING INTO OR OUT OF THE JAIL IS STEEL.

THE INTERVIEW ROOMS ARE OPERATED BY KEY ONLY.

THEY'RE NOT OPERATED ELECTRONICALLY.

Q. DO THEY LOCK AUTOMATICALLY?

A. IF YOU PULL THEM CLOSED, YES, THEY DO.

[2344] Q. YOU CANNOT GET OUT FROM THE OUTSIDE WITHOUT A KEY?

A. FROM THE INTERVIEW ROOMS?

Q. YES.

A. NO, YOU CANNOT.

Q. IS THAT THE SAME UPSTAIRS?

A. I THINK SO.

I THINK UPSTAIRS IS KEYED FROM BOTH SIDES.

NORMALLY, THESE DOORS AREN'T CLOSED, THE HOLDING ROOMS, INTERVIEW ROOMS. NORMALLY, THE DOORS ARE OPEN.

UPSTAIRS, IF DETECTIVES AREN'T THERE, THE DETECTIVE BUREAU IS LOCKED UP ALSO.

THESE ROOMS ARE NORMALLY LOCKED. YOU NEED THE KEY DO GET INTO IT.

Q. COULD A PERSON LEAVE THE JAIL AREA WITHOUT ASSISTANCE FROM A POMONA POLICE OFFICER TO LEAVE TO GET OUTSIDE?

A. NO.

Q. ARE THE INTERVIEW ROOMS DOWNSTAIRS IN THE JAIL USED EITHER EXCLUSIVELY OR PRIMARILY FOR PEOPLE IN CUSTODY?

A. WELL, IN CUSTODY YOU WOULD HAVE TO BE WITH A POLICE OFFICER OR BE A POLICE OFFICER TO GET INTO THERE.

YOU COULDN'T GET INTO THE JAIL UNLESS YOU WERE A POLICE OFFICER OR A SHERIFF OR A DEPUTY OR AN ATTORNEY.

YOU COULDN'T GET IN THERE, INTO THE JAIL [2345] ITSELF.

Q. BUT YOU CONDUCT INTERVIEWS WITH CERTAIN PEOPLE IN THOSE ROOMS DOWNSTAIRS.

WOULD THOSE ORDINARILY BE PEOPLE WHO ARE ALREADY IN CUSTODY OR CONFINED WITHIN THE JAIL OR GOING TO BE?

A. ARE GOING TO BE, YES.

IF YOU HAD A SUSPECT IN MIND, A PERSON IN MIND YOU WANTED TO INTERVIEW THEM IF YOU'RE A POLICE OFFICER OR DEPUTY, YOU COULD BE ALLOWED TO GO IN THERE AND USE THOSE ROOMS, YES.

Q. IF YOU HAVE AN ORDINARY CITIZEN INFORMANT THAT YOU'RE TALKING TO, WOULD YOU NORMALLY TAKE THAT PERSON UPSTAIRS IN THOSE ROOMS RATHER THAN THE JAIL?

MR. BURNS: OBJECTION. IRRELEVANT WHAT THIS OFFICER WOULD DO WHO WAS FAMILIAR WITH THE POMONA POLICE OFFICERS WHO WAS EMPLOYED BY THE POMONA POLICE DEPARTMENT AS OPPOSED TO OFFICERS WHO WERE NOT FAMILIAR WITH THE POMONA POLICE DEPARTMENT, OFFICERS NOT EMPLOYED BY THE POMONA POLICE DEPARTMENT.

THE COURT: SUSTAINED.

MR DAUGHERTY: THE ONLY THING IS – THE ONLY STANDARD ISN'T SIMPLY WHAT IS WITHIN THE MIND OF THE INTERROGATING OFFICER. ALSO WHAT IS IN THE MIND OF THE DEFENDANT. WHAT HE WAS REASONABLY LED TO BELIEVE.

IT MAY BE RELEVANT WHAT IS NORMALLY DONE IN POMONA BY POMONA POLICE OFFICERS, BECAUSE OF WHAT IS IN THE MIND OF THE DEFENDANT, NOT –

[2346] MR. BURNS: WHAT WOULD BE IN THE MIND OF THE POMONA POLICE DEPARTMENT WOULD BE IRRELEVANT.

HE COULD DESCRIBE THE CIRCUMSTANCES AS HE HAS DONE AS TO THE PHYSICAL SETTING. CERTAINLY CANNOT INDICATE WHAT WAS IN HIS MIND, ANYWHERE RELATED TO WHAT WAS IN MR. STANSBURY'S MIND.

THE COURT: OVERRULED. YOU MAY ANSWER.

THE WITNESS: COULD YOU REASK THE QUESTION.

MR DAUGHERTY: COULD YOU READ THE QUESTION.

(THE RECORD WAS READ BY THE REPORTER.)

THE WITNESS: YES, I WOULD.

MR DAUGHERTY: NOTHING FURTHER.

CROSS-EXAMINATION +

BY MR. BURNS:

Q. OFFICER, DO YOU ALLOW OTHER LAW ENFORCEMENT PERSONNEL FROM OTHER AGENCIES TO BRING PEOPLE TO YOUR JAIL AREA AND CONDUCT INTERVIEWS IN THAT JAIL AREA?

A. YES, SIR, WE DO.

Q. AND AFTER HOURS – WHEN I SAY AFTER HOURS, AFTER NORMAL BUSINESS HOURS, IS THE DETECTIVE BUREAU NORMALLY CLOSED AND LOCKED?

A. YES, IT IS.

Q. ARE THOSE INTERVIEW ROOMS NORMALLY CLOSED AND LOCKED?

A. YES, THEY ARE.

Q. IF YOU WERE A POLICE OFFICER, SAY, GOING TO A FOREIGN STATION OR A STATION THAT YOU WERE NOT FAMILIAR [2347] WITH AFTER HOURS, SPECIFICALLY, SAY, ABOUT 11:00 P.M. AT NIGHT, WOULD YOU NORMALLY TAKE SOMEONE THAT YOU WISH TO INTERVIEW, WHETHER THEY WERE A CITIZEN INFORMANT OR NOT, TO A SALLY PORT AREA SO YOU CAN MAKE CONTACT WITH SOMEONE FROM THE JAIL AREA?

A. YES.

MR. BURNS: THANK YOU. I HAVE NO FURTHER QUESTIONS.

MR DAUGHERTY: NO FURTHER QUESTIONS.

THE COURT: THANK YOU, OFFICER.

YOU MAY STEP DOWN. YOU'RE FREE TO GO.

MR DAUGHERTY: DEFENSE RESTS AS FAR AS THIS MOTION IS CONCERNED.

MR. BURNS: WE HAVE NO ADDITIONAL EVIDENCE WITH REGARDS TO THIS PARTICULAR MOTION.

THE COURT: MATTER SUBMITTED? YOU WISH TO ARGUE?

MR DAUGHERTY: I WOULD LIKE TO MAKE A FEW COMMENTS.

EVEN FROM A FACTUAL STANDPOINT, THE EVIDENCE THAT HAS BEEN BROUGHT OUT BEFORE THE COURT, THE SIGNIFICANCE TO AGAIN REITERATE TO THE COURT.

I THINK THE COURT IS WELL AWARE FROM ALL THE TESTIMONY WE'VE HAD, WHAT INFORMATION THE POLICE OFFICERS, SPECIFICALLY LIEUTENANT JOHNSTON HAD REGARDING AN ICE CREAM TRUCK DRIVER BEFORE THE CONVERSATION WITH MR. STANSBURY.

I THINK ONE OF THE KEY ELEMENTS OF THIS MOTION IS WHAT A REASONABLE PERSON SUCH AS IN THIS CASE, [2348] MR. STANSBURY, WOULD HAVE FELT HIMSELF. WHAT HE WOULD HAVE FELT ABOUT THE FACT THAT THERE WAS A CUSTODIAL INTERROGATION.

THE POLICE OFFICERS ARRIVED TO INTERVIEW, TO CONTACT MR. STANSBURY AT HIS TRAILER PARK APPROXIMATELY 11 O'CLOCK AT NIGHT.

WHEN HE ARRIVED AT THE FRONT DOOR OF HIS TRAILER AND LOOKED OUT, THERE WAS A POLICE OFFICER DIRECTLY IN FRONT OF HIM WITH A GUN, A FIREARM IN HIS HAND.

THERE WERE THREE OTHER POLICE OFFICERS STANDING OUT IN FRONT OF HIM, FANNED OUT IN FRONT OF HIM. ONE IN FRONT; ONE 20 FEET OR SO BACK. ALL THREE OF THOSE ADDITIONAL POLICE OFFICERS HAD THEIR FIREARMS IN THEIR HANDS.

HE WAS THEN ASKED TO GO DOWN TO THE POMONA POLICE STATION. THEY WOULD PROVIDE TRANSPORTATION FOR HIM.

AFTER BEING TAKEN TO THE POMONA POLICE STATION, HE IS DRIVEN NOT TO THE POLICE STATION ITSELF, BUT HE IS TAKEN TO THE JAIL.

THE AUTOMOBILE DRIVES INTO THE SALLY PORT OF THE JAIL.

ONCE THE AUTOMOBILE GOES IN, IT GOES IN THROUGH AN ELECTRONIC GATE THAT GOES BEHIND THE VEHICLE.

HE IS TAKEN OBVIOUSLY IN A SECURE AREA, JAIL AREA.

HE KNOWS IS GOING TO BE UNABLE TO LEAVE [2349] WITHOUT THE ASSISTANCE OF OTHER POLICE OFFICERS.

AFTER BEING PUT IN AN INTERVIEW ROOM, HE IS INTERVIEWED FOR A PERIOD OF APPROXIMATELY 30, 45 MINUTES.

THE KEY TO MIRANDA IS ONE, THE SITE OF INTERROGATION WHICH IN THIS CASE WAS THE INTERIOR OF THE POLICE JAIL WITHIN ABOUT 10, 15 FEET OF THE BOOKING AREA, WITHIN A MATTER OF FEET WITHIN THE JAIL CELLS THEMSELVES.

SECONDLY, WELL THE INVESTIGATION HAD THE SUSPICION, HAD ACTUALLY FOCUSED ON THIS DEFENDANT, AND WE HAVE TO MAKE A DETERMINATION AS TO WHAT POINT IN TIME SUSPICION HAD ACTUALLY FOCUSED ON MR. STANSBURY.

THREE VERY IMPORTANT ISSUES IN THIS CASE. WHETHER THE OBJECTIVE INDICIA IN THIS CASE FOR ARREST OR CUSTODY WAS PRESENT FOR MR. STANSBURY TO SEE. LASTLY, THE LENGTH AND FORM OF QUESTIONING.

MR. STANSBURY IS IN THE JAIL AREA. AND HE, I THINK, REASONABLY CAN ASSUME THAT HE IS CERTAINLY IN A CUSTODIAL SETTING.

HE IS BEING ASKED QUESTIONS THAT GO WELL BEYOND WHAT DID HE OBSERVE ON THE AFTERNOON OF THE 28TH, IN THE AREA.

HE IS BEING ASKED SPECIFIC QUESTIONS ABOUT HIS ROUTE TO THAT LOCATION, HIS ROUTE HOME THAT EVENING, WHERE HE STOPPED FOR GASOLINE, WHAT KIND OF GASOLINE HE BOUGHT, WHAT KIND OF STATION, HOW LONG IT TOOK HIM, WHY HE TOOK A PARTICULAR ROUTE.

HE WAS THEN ASKED IF HE TOOK HIS AUTOMOBILE LATER OUT THAT NIGHT AT 12 O'CLOCK.

[2350] THERE'S ONE POINT IN TIME, AND I THINK NO ONE WOULD DISAGREE, INCLUDING MR. BURNS, THAT THE FOCUS OF SUSPICION CAME RIGHT DOWN TO MR. STANSBURY.

IN FACT, DETECTIVE JOHNSTON AGREED ALSO.

HE ASKED THE QUESTION WHEN HE LEARNED THAT MR. STANSBURY HAD TAKEN A VEHICLE AFTER MIDNIGHT THAT NIGHT.

HE ASKED A SPECIFIC QUESTION, "WOULD YOU DESCRIBE THAT VEHICLE."

AND HE INDICATED THAT HE KNEW HE ALREADY HAD IN MIND A DESCRIPTION OF A VEHICLE.

HE KNEW THE DESCRIPTION OF THE VEHICLE THAT HAD BEEN INVOLVED, DUMPING THE BODY IN THIS CASE.

AND HE SUSPECTED THAT HE MIGHT GET THE SAME DESCRIPTION FROM MR. STANSBURY, THE REASON HE ASKED THE QUESTION.

ARGUABLY, AT THAT POINT IN TIME WHEN HE ASKED THAT QUESTION, THE FOCUS OF SUSPICION HAD NARROWED DOWN TO MR. STANSBURY.

CERTAINLY WHEN MR. STANSBURY DESCRIBED THE VEHICLE HE TOOK OUT AND EXACTLY MATCHED THE DESCRIPTION OF THE VEHICLE THAT HAD DUMPED THE VICTIM'S BODY IN PASADENA, AT THAT POINT IN TIME HE ADMITTED ON THE STAND DEFINITELY THE FOCUS OF SUSPICION HAD COME DOWN TO MR. STANSBURY AT THAT TIME.

THERE WERE TWO ADDITIONAL QUESTIONS ASKED. ONE, WHAT IS YOUR PAST RECORD; AND TWO, QUESTIONS REGARDING WHETHER OR NOT MR. STANSBURY WOULD TAKE A [2351] POLYGRAPH LIE DETECTOR TEST.

I THINK UNQUESTIONABLY – I DOUBT THAT MR. BURNS WOULD REALLY ARGUE AGAINST IT. THOSE TWO STATEMENTS, THE STATEMENTS REGARDING THE PAST RECORD AND THE STATEMENTS REGARDING NOT TAKING A POLYGRAPH TEST.

THOSE TWO STATEMENTS SHOULD VERY CLEARLY AND ALMOST UNCONTESTABLY BE SUPPRESSED AS A VIOLATION OF MIRANDA.

THE QUESTION IS GOING TO BE FOR THAT PERIOD OF TIME, AT WHAT POINT OF TIME DID THE FINGER OF SUSPICION ACTUALLY FOCUS ON MR. STANSBURY, AND AT WHAT POINT IN TIME DID HE FEEL HE WAS IN A CUSTODIAL INTERROGATION SITUATION.

OUR CONTENTION IS THAT THE INFORMATION THAT DETECTIVE JOHNSTON HAD WHICH WAS THAT A LITTLE GIRL DISAPPEARED AND LATER FOUND OUT SHE HAD BEEN KILLED. THE LAST PERSON – THE INFORMATION HE HAD WAS THE LAST PERSON SHE HAD SEEN WAS AN ICE CREAM TRUCK DRIVER WITH RED HAIR AND A BUSHY RED BEARD; THAT SHE HAD HAD A PREARRANGED MEETING WITH THIS CREAM TRUCK DRIVER AFTER DINNER.

IN FACT, THAT ICE CREAM TRUCK DRIVER HAD BEEN UNUSUALLY FRIENDLY TO ROBYN JACKSON.

HE HAD – THERE WAS ALSO AN INTERVIEW OF THE NEIGHBORS, AND THAT NAME KEPT COMING UP, ICE CREAM TRUCK DRIVER KEPT COMING UP.

OBVIOUSLY, ALL ICE CREAM TRUCK DRIVERS WERE POSSIBLY SUSPECTS.

BUT WHEN YOU LOOK AT THE WAY MR. STANSBURY WAS HANDLED, THAT IS NUMBER ONE.

[2352] FOUR OFFICERS WENT DOWN TO PICK HIM UP. ALL FOUR OFFICERS DREW THEIR FIREARMS.

I DON'T THINK IT'S THAT COMMON THAT OFFICERS, POLICE OFFICERS IN THE FIELD WHEN TALKING TO WITNESSES WILL DRAW THEIR FIREARMS, NOT UNLESS THERE'S A SPECIFIC REASON TO DO SO, GOOD REASON TO DO SO.

HE IS THEN TAKEN, NOT TO AN INTERVIEW ROOM IN THE POLICE DEPARTMENT. HE IS TAKEN TO THE JAIL PROPER ITSELF, INTO AN INTERVIEW ROOM.

I FEEL HE REASONABLY FELT HE WAS CONFINED AND IN CUSTODY AT THAT POINT IN TIME.

AND THE QUESTIONING WAS DIRECTLY RELATED TO OBTAINING INCRIMINATORY INFORMATION IN THIS CASE AND LASTED AT LEAST 30 TO 45 MINUTES.

UNDER THOSE CIRCUMSTANCES, WE FEEL THAT THAT STATEMENT, WELL BEFORE THE STATEMENT REGARDING HIS PAST RECORD AND THE POLYGRAPH, STATEMENTS WELL BEFORE THAT SHOULD BE SUPPRESSED.

WE'LL SUBMIT IT.

THE COURT: I'M SORRY. WHEN YOU SAY STATEMENTS, WHAT SPECIFIC STATEMENTS ARE YOU DIRECTING YOURSELF TO?

YOU SAID THE STATEMENT ABOUT THE PAST RECORDS, THE STATEMENT ABOUT THE POLYGRAPH. AND THEN YOU SAID STATEMENTS WELL BEFORE THAT.

MR. DAUGHERTY: YES, I'M TALKING ABOUT THE STATEMENT, FOR INSTANCE, OF THE – ALL OF THE STATEMENTS.

AT SOME POINT IN TIME THE COURT HAS TO BASICALLY GO BACKWARDS FROM THERE, I THINK.

[2353] WE WOULD ASK THAT ALL THE STATEMENTS MR. STANSBURY MADE TO THE POLICE THAT EVENING BE SUPPRESSED.

THE COURT: ALL RIGHT. THANK YOU.

MR. BURNS?

MR. BURNS: THANK YOU, YOUR HONOR.

YOUR HONOR, THE DEFENSE MAKES AN ARGUMENT WHICH WAS A LITTLE DIFFICULT TO FOLLOW.

I WOULD INDICATE TO THE COURT, NUMBER ONE, I HAD SOME WRITTEN POINTS AND AUTHORITIES, AND I WOULD LIKE TO PROCEED UNDER THAT ARGUMENT OR THAT FORMAT.

THE COURT: YES.

MR. BURNS: NUMBER 1. WHAT THE DEFENSE HAS ATTEMPTED TO ESTABLISH DURING THE TESTIMONY AT THIS POINT IN TIME APPARENTLY WAS TO LAY SOME FOUNDATION FOR THEIR BELIEF THAT THE INVESTIGATING OFFICER IN SOME WAY WAS SUSPICIOUS OF MR. STANSBURY OR HE

WAS THE PRIME FOCUS OF HIS SUSPICIONS AT THAT TIME.

I THINK IF ANYTHING, THE EVIDENCE HAS TENDED TO SHOW THE CONTRARY OF THAT.

BUT WHETHER THAT IS TRUE OR NOT, LEGALLY SPEAKING, I DON'T BELIEVE THAT THAT HAS ANY SIGNIFICANT RELEVANCE.

AND I'D START FIRST WITH THE FEDERAL RULE WHICH I HAD CITED TO THE COURT, OREGON VERSUS MATHIESON, 429 U.S. AT PAGE 495, 1977 CASE. WHERE THE U.S. SUPREME COURT BASICALLY INDICATED "POLICE OFFICERS ARE NOT REQUIRED TO ADMINISTER MIRANDA WARNINGS TO EVERY-ONE WHOM THEY QUESTION. NOR IS THE REQUIRE-MENT OF WARNING TO BE [2354] IMPOSED SIMPLY BECAUSE THE QUESTIONING TAKES PLACE IN THE STATION HOUSE, OR BECAUSE THE QUESTIONED PERSON IS ONE WHOM THE POLICE SUSPECT AT THAT POINT IN TIME."

THE MIRANDA WARNINGS ARE REQURIED ONLY WHEN THERE HAS BEEN SUCH A RESTRICTION ON A PERSON'S FREEDOM AS TO RENDER HIM IN CUS-TODY."

IT IS THAT SORT OF COERCIVE ENVIRONMENT WHICH MIRANDA BY HIMSELF WAS MADE APPLI-CABLE AND MADE LIMITED."

THE FACTS OF MATHIESON, THE POLICE SUS-PECTED THAT THE DEFENDANT HAD COMMITTED A BURGLARY. BUT THEY KNEW THAT THE DEFEN-DANT WAS THEN ON PAROLE.

THEY LEFT WORD WITH THE DEFENDANT AT HIS HOUSE FOR HIM TO CALL.

AFTER THE DEFENDANT CALLED, THE POLICE ASKED HIM TO COME DOWN TO THE STATION FOR AN INTERVIEW.

THIS INTERVIEW, WHICH WAS COMPLETED IN A CLOSED ROOM, WAS DONE WITHOUT MIRANDA WARNINGS.

PRIOR TO THE INTERVIEW, THE DEFENDANT WAS TOLD TO HIS FACE THAT HE WAS A SUSPECT.

ALTHOUGH HE WAS NOT GOING TO BE ARRESTED, HE WAS FALSELY TOLD THAT HIS FIN-GERPRINTS WERE FOUND AT A BURGLARY SCENE, AND HIS COOPERATION COULD ONLY HELP HIM IN THE FUTURE.

AT THAT POINT IN TIME, THE DEFENDANT CON-FESSED AFTER BEING TOLD HE WAS A DEFENDANT AT THE STATION HOUSE.

THE U.S. SUPREME COURT SAID THAT WAS [2355] ADMISSIBLE; NO MIRANDA RIGHTS WERE RECOV-ERED.

RETURNING TO THE STATE RULES IN CALIFOR-NIA. WE HAVE MUCH THE SAME ANALOGOUS SITU-ATION.

IN THE CASE OF IN RE DANNY G., 121 CAL.APP.3D AT PAGE 44, A 1981 CASE, DEALS WITH A VERY SIMILAR SITUATION, WHERE THE POLICE ARE SUSPICIOUS THAT THE DEFENDANT WAS THE PER-SON RESPONSIBLE FOR THE ACT IN QUESTION.

THAT THE QUESTIONING THEMSELVES WAS IN THE NATURE OF AN ACCUSATORY QUESTIONING AS INSTEAD OF AN OPPORTUNITY FOR THE WITNESS MERELY TO EXPLAIN WHAT HE KNEW.

THE COURT IN THAT CASE HELD THE POLICE DID NO MORE THAN GIVE THE APPELLANT THE OPPORTUNITY TO EXPLAIN AWAY SUSPICIOUS CIRCUMSTANCES AND HOPEFULLY TO COOPERATE WITH THEM IN THEIR EFFORTS TO APPREHEND THE TWO CULPRITS.

NO MIRANDA RIGHTS WERE REQUIRED.

THE PERSON WAS NOT UNDER ARREST.

IN THE SAME SITUATION, PEOPLE VERSUS SALINAS, 131 CAL.APP.3D AT PAGE 925. IT'S A 1983 CASE.

PEOPLE VERSUS SALINAS INVOLVED A DEFENDANT WHOM THE POLICE BELIEVED WAS RESPONSIBLE FOR A CHILD ABUSE ALLEGATION.

PRIOR TO INTERVIEWING THE SUSPECT, THEY INFORMED HIM THAT THEY WERE SUSPICIOUS THAT HE WAS RESPONSIBLE FOR THE CHILD ABUSE.

NEVERTHELESS, WITHOUT MIRANDA WARNINGS, THEY ASKED THE DEFENDANT QUESTIONS CONCERNING INJURIES ON THE [2356] VICTIM CHILD, HOW THEY GOT THERE.

THE POLICE LATER TOOK THE DEFENDANT TO THE HOSPITAL WHERE THE CHILD WAS BEING TREATED AND ASKED ADDITIONAL QUESTIONS CONCERNING THE INJURIES.

THE COURT HELD THAT EVEN THOUGH THE FOCUS OF SUSPICION HAD FALLEN ON THE DEFENDANT, EVEN THOUGH THE DEFENDANT LATER WAS MOVED BY THE POLICE, TAKEN TO THE HOSPITAL, THAT THESE QUESTIONS DID NOT REQUIRE MIRANDA WARNINGS.

THE POLICE HAD THE RIGHT TO DETAIN THE DEFENDANT TO ASK QUESTIONS WHICH WERE NOT ACCUSATORY BUT MERELY GIVE THE DEFENDANT AN OPPORTUNITY TO EXPLAIN THE INJURIES AND TO DESCRIBE WHAT ACTIVITY HE DID IN THE CASE IN QUESTION.

EXACTLY THE SAME TYPE OF QUESTIONING THAT WE HAVE IN THIS SITUATION.

THE ONLY ELEMENT OF THE FOUR ELEMENTS WHICH ARE PRESENT IN A STANDARD MIRANDA ANALOGOUS UNDER THE CALIFORNIA LAW, WHICH IN ANY WAY RELEVANT OR PRESENT IN OUR FACT SITUATION, IS THE SITUS OF THE INTERROGATION.

EVEN THE SITUS OF THE INTERROGATION CLEARLY AT A STATION HOUSE IN AN INTERVIEW ROOM WHICH WAS ATTACHED TO A JAIL CELL, EVEN IN NORMAL SITUATIONS IS NOT CONTROLLING.

CASE CITED, PEOPLE VERSUS CARTER, 117 CAL.APP.3D AT PAGE 549, 1982 CASE, DEALT WITH A SITUATION WHERE A DEFENDANT HAD GONE TO A POLICE STATION TO VISIT A PRISONER.

THE POLICE DETECTED A POSSIBLE CRIME. THAT [2357] IS, BRINGING CONTRABAND INTO THE POLICE STATION.

THE POLICE CONTACTED THE SUSPECT, THE DEFENDANT; ASKED HIM TO STEP INTO A SPECIAL OFFICE AREA FOR QUESTIONING.

THEY THEN INFORMED HIM THAT HE WAS IN FACT UNDER SUSPICION AT THAT TIME AND WITHOUT MIRANDA RIGHTS ASKED HIM QUESTIONS CONCERNING THE PRESENCE IN THE STATION HOUSE AND WHAT HE WAS DOING THERE.

THOSE STATEMENTS WERE ADMISSIBLE.

THE CALIFORNIA SUPREME COURT, DEALING WITH THE SIMILAR ISSUE IN PEOPLE VERSUS SAM, 71 CAL. 2D. 194, A 1969 CASE, INDICATED THE SITUATION WHERE A DEFENDANT IS FIRST INTERVIEWED AT A SCENE AND IS LATER ASKED TO COME TO THE POLICE STATION FOR MORE INTENSIVE QUESTIONS.

THAT SUCH A PROCEDURE WAS NOT INHERENTLY COERCIVE, NOR WAS IT NECESSARILY A CUSTODIAL INTERROGATION.

AND AGAIN, STATEMENTS MADE IN THAT SITUATION WERE ADMISSIBLE. THAT'S A GENERAL STATEMENT OF THE LAW.

SPECIFICALLY, THE FACTS THAT WE'VE DEVELOPED IN THIS CASE INDICATE THAT THIS PERSON, MR. STANSBURY, WHEN HE WAS BEING INTERVIEWED WAS IN FACT NOT A SUSPECT TO THIS CASE.

NUMBER ONE, OF COURSE WE HAVE THE TESTIMONY OF THE INVESTIGATING OFFICER, MR. JOHNSTON, THAT HE WAS NOT IN FACT A SUSPECT IN THIS CASE.

WE ALSO HAVE THE GENERAL FACT PATTERN OF WHAT WAS DONE THAT NIGHT, WHICH IS HIGHLY INDICATIVE THAT THAT [2358] TESTIMONY WAS IN FACT TRUE.

EIGHT OFFICERS LEFT FROM THE BALDWIN PARK AREA TO COME TO POMONA. TWO PEOPLE THAT WERE GOING TO BE TALKED TO THAT NIGHT.

ALL EIGHT WENT TO THE OTHER PERSON'S ADDRESS, THE BLACK PERSON, IF YOU WILL, FOR WANT OF A BETTER DESCRIPTION.

THE HOMICIDE OFFICERS AND DETECTIVE BELL MADE ENTRY OR NOTICE TO THAT APARTMENT.

THE HOMICIDE OFFICERS AND DETECTIVE BELL TOOK THAT PERSON WITH THEM AND WENT TO THE POMONA POLICE STATION.

THEY SET UP AND ATTEMPTED TO CONTACT THAT PERSON AND TO START THE INTERVIEW OF THAT PERSON PRIOR TO SPEAKING TO MR. STANSBURY.

THE OFFICERS THAT WERE DISPATCHED TO MAKE CONTACT WITH MR. STANSBURY WERE GIVEN NO INSTRUCTIONS THAT HE WAS A SUSPECT, HAD NO INFORMATION IN THE CASE; WERE NOT TOLD ANYTHING OTHER THAN TO GO CONTACT MR. STANSBURY AND DO ONE VERY IMPORTANT THING. AND THAT WAS ASK MR. STANSBURY TO

COME DOWN TO THE STATION AND TALK TO THE OFFICERS.

AND THEY WERE INFORMED THAT THEY SHOULD TELL MR. STANSBURY THAT HE COULD DRIVE DOWN TO THE STATION HIMSELF IF HE WISHED, OR IF HE NEEDED TRANSPORTATION, TO OFFER THAT TRANSPORTATION TO MR. STANSBURY.

CERTAINLY, SOMEONE WHO IS A SUSPECT, SOMEONE WHO IS IN THAT AREA IS NOT GOING TO BE GIVEN AN [2359] OPPORTUNITY TO UTILIZE HIS OWN TRANSPORTATION TO COME DOWN FOR AN INTERVIEW IF IN FACT HE IS A TRUE SUSPECT.

IN ADDITION, THE HOMICIDE OFFICER HIMSELF TESTIFIED IF HE HAD SOMEONE WHO IS A SUSPECT, HE HIMSELF GOES TO THAT LOCATION AND INITIATES CONTACT.

HE'S NOT JUST GOING TO SEND SOME PEOPLE WHO ARE UNFAMILIAR WITH THE CASE TO MAKE THE INITIAL CONTACT, NUMBER ONE.

NUMBER TWO. NOW, ABOUT THE MANNER IN WHICH MR. STANSBURY WAS ACTUALLY TRANSPORTED TO THE STATION. HE WAS NOT HANDCUFFED. HE WAS NOT RESTRAINED IN ANY MANNER.

HE WAS OFFERED AN OPPORTUNITY TO DRIVE HIS OWN VEHICLE.

BECAUSE HE HAD A PROBLEM, HE WAS ALLOWED TO SIT IN THE FRONT SEAT OF THE POLICE CAR OR THE CAR USED BY THE POLICE TO BE BROUGHT DOWN.

ALL OF THESE ACTIVITIES WHICH ARE NOT NORMALLY ACCORDED SOMEONE WHO WOULD BE VIEWED AS A SUSPECT IN IN FACT A CRIMINAL INVESTIGATION AT THAT POINT IN TIME.

WHY DID THE POLICE OFFICERS WHO BROUGHT MR. STANSBURY TO THE STATION GO TO A DIFFERENT POINT THAN MR. JOHNSTON?

NUMBER ONE, THEY ESTABLISHED THERE WAS NO COMMUNICATION BETWEEN THE TWO OF THEM. THERE WAS NO SUBSTITUTION AS TO WHERE TO GO.

NUMBER TWO, THE BALDWIN PARK OFFICERS INDICATED THEY WERE NOT FAMILIAR WITH THE POMONA AREA.

THAT THEY'RE GOING TO A STATION AT 11 O'CLOCK AT NIGHT, [2360] ONE THAT THEY DON'T KNOW OF.

THEY GO TO THE ONLY PLACE THEY KNOW IS DEFINITELY GOING TO BE OPEN, AND THEY KNOW ACCESS WILL ALWAYS BE MADE. THAT IS, THE SALLY PORT AREA IS ALWAYS OPEN AROUND THE CLOCK AT ANY STATION HOUSE.

THEY MAKE ENTRY AND TAKE HIM IN THERE.

HE IS NOT IN ANY WAY FINGERPRINTED, PHOTOGRAPHED, ANY NORMAL BOOKING PROCEDURE. NOTHING OF THAT NATURE IS ATTEMPTED.

HE'S BROUGHT INTO AN INTERVIEW ROOM WHICH HAS A TABLE AND CHAIRS AND GIVEN AN OPPORTUNITY TO SIT DOWN THERE AND WAIT.

HE'S ASKED, HIMSELF, IF HE WISHES TO COME.

THE OFFICERS INDICATE IF MR. STANSBURY AT ANY TIME INDICATED THAT HE DIDN'T WISH TO COME, THEY SIMPLY WOULD HAVE NOT TAKEN HIM, BUT BACKED OFF AT THAT PERIOD OF TIME.

NO EVIDENCE TO SUGGEST HE WAS IN FACT IN CUSTODY NOR A PRIME SUSPECT SIMPLY BY THE MANNER IN WHICH THE INTERVIEW WAS CONDUCTED.

HOW ABOUT WHO CONDUCTED THE INTERVIEW?

WE HAVE TWO TRAINED HOMICIDE OFFICERS INVESTIGATING THE CASE, TALKING TO THE BLACK MAN UPSTAIRS.

ONE HOMICIDE OFFICER COMES DOWN TOGETHER WITH A ROOKIE INVESTIGATOR TO SIT DOWN AND TALK TO MR. STANSBURY.

NOT THE TYPE OF INTERVIEW TEAM THAT ONE WOULD SUSPECT IF IN FACT HE WAS A SUSPECT.

[2361] THIS IS FURTHER BORNE OUT BY THE FACT LATER ON WHEN MR. STANSBURY DID BECOME A SUSPECT.

ALL QUESTIONING WAS STOPPED. THE INTERVIEW TEAM PRESENTLY THERE GOT UP AND LEFT.

THEN THEY BROUGHT DOWN THE THREE HOMICIDE INVESTIGATORS WHO THEN COMMENCED WHAT WOULD BE A STANDRARD INVESTIGATION OR INTERROGATION, IF YOU WILL, OF SOMEONE WHO WAS A SUSPECT.

AND MIRANDA RIGHTS WERE GIVEN AT THAT POINT IN TIME.

[2362] CLEARLY THE CHANGE IN PROCEDURES AGAIN IS INDICATIVE OF WHAT IN FACT WAS TRULY TAKING PLACE AT THAT POINT IN TIME.

THE COURT: LET ME ASK A QUESTION.

WHAT POINT IN THE SERIES OF CONVERSATIONS WITH MR. STANSBURY WOULD YOU ASSUME THAT THE FOCUS OF THE INVESTIGATIONS BEGAN TO KEY ONTO HIM, THE FOCUS?

MR. BURNS: I THINK CLEARLY FROM THE TESTIMONY OF THE OFFICER, HE BEGAN USING THE QUESTION PHRASE, HE BEGAN TO BECOME SUSPICIOUS OF MR. STANSBURY ONLY AFTER MR. STANSBURY MADE A DESCRIPTION OF A CAR THAT HE WAS DRIVING THAT NIGHT WHICH MATCHED WITH A DESCRIPTION OF A CAR FROM WHOM THE BODY WAS BELIEVED TO HAVE BEEN DUMPED AND THEN ALL OF THE THINGS KIND OF FELL IN PLACE.

THAT OFFICER AT THAT POINT IN TIME THEN SWITCHED AND ASKED HIM A QUESTION CONCERNING MR. STANSBURY'S BACKGROUND.

AND WHEN THE – I DON'T KNOW FOUR OR FIVE PRIOR CONVICTIONS FOR CHILD MOLEST AND RAPE AND THINGS OF THAT NATURE CAME ABOUT, CLEARLY AT THAT POINT IN TIME, WHEN THE OFFICER WAS CONFRONTED WITH THAT INFORMATION, ONE WOULD HAVE TO CLEARLY INDICATE MR. STANSBURY WAS THE PRIMARY FOCUS OF THE INVESTIGATION.

AS TO WHEN HE – YOU KNOW, WHEN THE FOCUS WAS ACTUALLY THERE, CLEARLY IT WAS AFTER MR. STANSBURY ANSWERED THE QUESTION CONCERNING HIS PRIOR BACKGROUND.

AND CLEARLY IT WAS STARTING TO FOCUS IN. I MEAN ONE BECAME SUSPICIOUS AFTER HE ANSWERED THE QUESTION [2363] AND AFTER HE DESCRIBED THE VEHICLE THAT HE WAS OPERATING ON THE NIGHT IN QUESTION.

SO I THINK THAT WOULD BE THE TIME FRAME THAT WE'RE DEALING WITH AT THIS POINT IN TIME.

I'D INDICATE TO THE COURT THAT THE DEFENSE SPECIFICALLY MENTIONED TWO STATEMENTS MADE BY MR. STANSBURY. ONE, AN OFFER TO TAKE A LIE DETECTOR TEST AND SO FORTH.

I WOULD AGREE WITH DEFENSE COUNSEL. CLEARLY THAT AREA IS SOMETHING THAT IS NOT ADMISSIBLE FROM AT LEAST TWO GROUNDS.

NUMBER ONE, THERE HAD IN FACT BEEN A MIRANDA IMPLICATION PRIOR TO THAT QUESTION BEING ASKED, AND OF COURSE, STANDARD POLICY IN THE PENAL CODE SECTION PREVENTS ANY INQUIRY INTO THAT TYPE OF MATERIAL AND INFORMATION.

IN ADDITION, I WOULD CONCEDE FOR THE PURPOSE OF THIS HEARING THAT THE FOCUS HAD FORMED ON HIM WHETHER THE OFFICER ASKED THE QUESTION, DO YOU HAVE ANY PRIOR RECORD.

AND SO HIS RESPONSE TO THAT QUESTION MAY BE ONE THAT THIS COURT WOULD FEEL WOULD BE INAPPROPRIATE AND MAY IN FACT HAD BEEN SOMETHING THAT SHOULD HAVE BEEN DONE OR QUESTION ASKED ONLY AFTER THE GIVING AND WAIVING OF MIRANDA RIGHTS. I HAVE NO PROBLEM WITH THAT. CLEARLY ALL QUESTIONS AND REPONSES UP UNTIL THAT QUESTION I THINK ARE CLEARLY ADMISSIBLE UNDER THE LAW.

AND THE ONLY ONE LAST POINT THAT I WOULD RAISE OR RESPOND TO DEFENSE COUNSEL'S ARGUMENT WAS THAT A [2364] REASONABLE PERSON LIKE MR. STANSBURY, WOULD HAVE THOUGHT THAT HE WAS IN CUSTODY.

CLEARLY FROM THE RECORD, THERE WAS NO INDICATION FROM ANY OF THE OFFICERS WHO HAD CONTACT WITH MR. STANSBURY, THAT HE WAS AT ALL RELUCTANT TO COME DOWN NOR WAS THERE ANY INDICATION THAT MR. STANSBURY AT ANYTIME INDICATED THAT HE DID NOT WISH TO BE THERE, THAT HE WISHED TO TALK TO ANY ONE, THAT HE WISHED TO DO ANYTHING TO DELAY WHAT WAS THEN THE ONGOING INTERVIEW PROCESS.

SO THERE WAS NOTHING OBJECTIVELY DONE OR SAID BY MR. STANSBURY TO SUGGEST THAT HE WAS UNCOMFORTABLE WITH WHAT WAS TAKING PLACE OR HE DID NOT WISH TO COOPERATE AT THAT POINT IN TIME.

CLEARLY, IN ADDITION, MR. STANSBURY HIMSELF HAS NOT TESTIFIED IN THIS CASE. IF HE

THOUGHT THAT HE WAS A SUSPECT, CERTAINLY HE COULD HAVE TAKEN THE STAND AND GIVEN US THE BENEFIT OF HIS THOUGHTS AS TO WHEN HE FELT THAT HE WAS IN CUSTODY.

AND THERE WAS NO SUCH EVEN ATTEMPT TO MAKE THAT OFFER.

IN ADDITION, THE MANNER IN WHICH HE WAS HANDLED, THE LACK OF HANDCUFFING, THE MANNER IN WHICH HE WAS OFFERED HIS OWN TRANSPORTATION, THE POSITION IN THE CAR THAT HE ENJOYED WHEN HE WAS GIVEN A RIDE DOWN TO THE POMONA POLICE STATION, THE FACT THAT HE WAS NOT IN ANY WAY BOOKED OR ANY OF THE BOOKING PROCESS STARTED WHEN HE FIRST WENT DOWN THERE, ARE ALL OBJECTIVE INDICIA OF THE FACT THAT HE WAS IN FACT NOT IN CUSTODY AND NOT A SUSPECT.

[2365] CERTAINLY TO ANYONE WHO WAS A REASONABLE PERSON THAT WOULD BE TRUE AS TO MR. STANSBURY AND HIS PECULIAR SETTING, THE FACT THAT HE HAS HAD, I USE THIS WORD ADVISEDLY, THE BENEFIT OF EXTENSIVE CONTACT WITH LAW ENFORCEMENT AGENCIES AND EXTENSIVE TIME SPENT IN CUSTODY AND BEEN ARRESTED, CERTAINLY CONVICTED NUMEROUS TIMES IN THE PAST, HE'S CERTAINLY GONE THROUGH AN ARREST PROCEDURE AND KNOWS WHAT IT MEANS TO BE IN CUSTODY AND NONE OF THOSE THINGS HAVE TAKEN PLACE UP UNTIL THAT POINT IN TIME.

SO EVEN FROM MR. STANSBURY'S OWN BACKGROUND, THERE WAS CERTAINLY NOTHING TO

SUSPECT OR THAT SUGGESTS HE WAS IN CUSTODY NOR THAT HE WOULD HAVE REASON TO FEEL HE WAS IN CUSTODY.

I WOULD INDICATE TO THE COURT THAT ALL THE STATEMENTS ARE CLEARLY ADMISSIBLE UP UNTIL THE QUESTION BY FROM JOHNSTON CONCERNING, DO YOU HAVE ANY PRIOR RECORD AND THEN THE COURT MAY RULE THAT ANY STATEMENTS AFTER THAT MAY HAVE BEEN IN FACT IN VIOLATION OF MIRANDA AND THAT WOULD BE THE PEOPLE'S POSITION.

THE COURT: MR. DAUGHERTY.

MR. DAUGHERTY: WE'LL SUBMIT IT, YOUR HONOR.

I DON'T THINK IT'S NECESSARY EITHER TO – I'M NOT GOING TO REITERATE THE POINTS AND AUTHORITIES. I ASSUME THE COURT HAS READ THEM ALL.

THE COURT: I HAVE READ THEM AND LISTENED TO TESTIMONY.

MR. DAUGHERTY: I'M ALSO AT THIS POINT IN TIME HANDING A NOTE. IT'S A NOTE FROM MR. STANSBURY TO MR. [2366] BURNS AT THIS POINT.

MR. BURNS: MAY I HAVE A MOMENT, YOUR HONOR?

THE COURT: YES, YOU MAY.

MR. BURNS: YOUR HONOR, I HAVE READ A NOTE; THAT IT APPEARS MR. STANSBURY HAS A

QUESTION ABOUT THE ACCURACY OF A TRANSCRIPT.

I HAVE NOT HAD A CHANCE TO LOOK INTO THESE MATTERS. PERHAPS I CAN ADDRESS THEM AFTER LUNCH.

THE COURT: I'M SORRY.

MR. BURNS: THE NOTE HAS NOTHING TO DO WITH THE HEARING WHICH WE ARE – I'M SORRY, WITH THE ARGUMENT PRESENTLY BEFORE THE COURT.

THE COURT: DO THEY REFER TO THE ACCURACY OF A TRANSCRIPT OF THE TESTIMONY IN THIS MOTION?

MR. BURNS: THEY MAY WELL, YOUR HONOR. IT REFERS TO – I'LL JUST READ THE NOTE FOR THE RECORD.

MR. DAUGHERTY: I THINK IT WOULD NOT AFFECT THE RULING OR THE ACCURACY. THE QUESTION I BELIEVE IS SIMPLY WHETHER OR NOT THE Q FOR QUESTION OR THE A FOR ANSWER IS IN THE RIGHT PLACE. PERHAPS THEY GOT TRANSPOSED.

MR. BURNS: YOUR HONOR, I BELIEVE THERE'S AN INDICATION THAT ON VOLUME 32, WHICH WAS OCTOBER 31ST, THAT ON PAGE 2181, MR. STANSBURY QUESTIONS THE CURRENT READING OF THE RECORD. AND LET ME SEE IF I CAN FIND MY VOLUME 32.

BASICALLY INDICATES THAT HE BELIEVES LINE 18 WHICH READS ANSWER SHOULD READ QUESTION. AND LINE 21 THAT READS QUESTION SHOULD READ ANSWER; LINE 22 THAT READS ANSWER SHOULD READ QUESTION; AND LINE 23 THAT READS [2367] QUESTION SHOULD READ ANSWER.

IF I MAY HAVE JUST A MOMENT TO READ THIS.

THE COURT: IT APPEARS AS IF ON LINE 26 IT SEEMS TO CORRECT ITSELF. IT WAS CORRECTED.

MR. BURNS: YES.

I WOULD AGREE WITH MR. STANSBURY. HE IS CORRECT. AND WOULD INDICATE TO THE COURT THAT THE OFFICIAL RECORD SHOULD BE MODIFIED TO REFLECT THE APPROPRIATE CHANGES THAT HAVE BEEN POINTED OUT.

THE CLERK: LINE 18, LINE 21 AND WHAT OTHER LINE?

THE COURT: LINE 18 SHOULD BE A Q INSTEAD OF AN A; LINE 21 SHOULD BE AN A INSTEAD OF A Q; LINE 22 SHOULD BE A Q INSTEAD OF AN A; AND LINE 23 SHOULD BE AN A INSTEAD OF A Q, AS I SEE IT.

MR. BURNS: THAT'S CORRECT, YOUR HONOR.

I WOULD JOIN IN THAT.

THE CLERK: WHAT WAS THE PAGE?

THE COURT: 2181.

I WOULD AGREE WITH BOTH MR. DAUGHERTY AND MR. BURNS' ANALYSIS AS TO THOSE QUESTIONS AND STATEMENTS ABOUT PAST RECORD AND CERTAINLY ABOUT THE PARAGRAPH.

I BELIEVE THAT MY RULING WOULD BE THAT THE MIRANDA QUESTION AS TO WHETHER ANY STATEMENTS SHOULD BE EXCLUDED FROM TESTIMONY BEING LIMITED TO THOSE TWO STATEMENTS OR QUESTIONS OR ANSWERS FROM THOSE QUESTIONS REGARDING PAST RECORD OF THE POLYGRAPH, I'M SATISFIED FROM LIEUTENANT JOHNSTON'S TESTIMONY THAT AT THE TIME THAT MR. STANSBURY WAS BROUGHT INTO THE STATION AND THAT HE HAD [2368] DIRECTED OTHER OFFICERS TO BRING MR. STANSBURY TO THE STATION, THAT THE FOCUS IN HIS MIND CERTAINLY WAS ON THE OTHER ICE CREAM DRIVER.

HE WAS BLACK AND HIS NAME ESCAPES ME AT THE MOMENT.

MR. BURNS: YUSUF.

THE COURT: AND I THINK IN HIS MIND, THE FACT THAT THEY WENT TO THE HOME – AS I RECALL THE TESTIMONY, THEY WENT TO THE HOUSE AND HAD TO FIND HIM UNDER THE BED.

UNDER THE BED AND IN EFFECT HE WAS HIDING. THAT IN TERMS OF THE TWO INDIVIDUALS IN THE STATION, THAT THE FOCUS I BELIEVE AT THE TIME THAT THE INTERVIEW STARTED WAS DEFINITELY ON YUSUF, PRIMARILY BECAUSE OF THE INFORMATION FROM THE LITTLE BOY INDICATING

THAT ROBYN HAD LEFT THE HOUSE AFTER DINNER TO MEET A BLACK ICE CREAM DRIVER.

AND BASED ON THE AUTHORITIES THAT HAVE BEEN CITED IN THE BRIEFS, I DON'T BELIEVE THAT THE LINE WAS CROSSED. GIVEN THE NATURE OF THE EXAMINATION AND COMMENTS BY MR. STANSBURY, MUCH OF WHAT WHICH WAS IN THE NARRATIVE, UNTIL THE QUESTION CAME IN ABOUT – THE QUESTIONS BEGAN TO KEY ON THE AUTOMOBILE.

AND THEN AFTER MR. STANSBURY MADE THE COMMENT ABOUT DESCRIBING THE TURQUOISE AUTOMOBILE, TURQUOISE-COLORED AUTOMOBILE, THAT'S WHEN THE FOCUS SHIFTED TO MR. STANSBURY.

AND ALL AFTER THAT STATEMENT, STARTING WITH HIS PAST RECORD WILL BE EXCLUDED.

[2369] MR. BURNS: THANK YOU, YOUR HONOR.

THE COURT: MOTION WILL BE GRANTED AS TO ANY QUESTIONS AFTER THAT STATEMENT.

NOW, THERE'S ONE OTHER – I WANT TO REFER BACK TO A MOTION BEFORE, A QUESTION ABOUT SANCTIONS AS TO THE THERMOMETER, THE FREEZER AND THE GASOLINE SLIPS.

I'VE ALREADY RULED AS TO MY EVALUATION, MY VIEW OF THE EVIDENCE. BUT I WOULD SAY THAT DURING THE COURSE OF THE TRIAL, THE QUESTION OF WHETHER OR NOT, THE MANNER IN WHICH THE EVIDENCE WAS HANDLED AND WHETHER OR NOT AN INSTRUCTION SHOULD BE

GIVEN TO THE JURY AS TO THE MANNER IN WHICH THAT EVIDENCE WAS HANDLED SO THAT THE JURY MAY DECIDE WHETHER OR NOT THAT IS A – SOMETHING THEY SHOULD CONSIDER IN TERMS OF THE EVIDENCE.

I DON'T MEAN WHEN I INDICATE THAT THERE SHOULD BE NO SANCTIONS; THAT IN FACT THERE MAY NOT AT SOME POINT BE AN INSTRUCTION BASED ON THE TESTIMONY. AND I HAVEN'T FORECLOSED – I DON'T MEAN TO FORECLOSE IT BY INDICATING THAT.

MR. DAUGHERTY: I UNDERSTAND.

MR. BURNS: I UNDERSTOOD THE COURT'S RULING AS SUCH.

THAT'S FINE.

THE COURT: I HADN'T SAID IT. SO I THOUGHT I'D CLARIFY IT.

* * *

WHAT'S NEXT?

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: NOVEMBER 5, 1984
HONORABLE: JAMES H. PLATT JUDGE
T SMITH Deputy Sheriff
J MARKS Deputy Clerk
L PRUDHOMME/N COPPER Reporter

A 529247 **(Parties and counsel checked if present)**

PEOPLE OF THE STATE OF CALIFORNIA

VS

OI STANSBURY, ROBERT EDWARD
187 1 ct 288.B 1 ct 261.2 1 ct 207 1 ct

Counsel for People:

DPUTY DISTRICT ATTY: R. BURNS

Counsel for Defendant: D. DAUGHERTY
A. ROBUSTO

NATURE OF PROCEEDINGS Pre-Trial Motions
Remanded 11-23-82

Defendant's motion to exclude certain testimony due to a Miranda issue, continued from November 1, 1984, is resumed with defendant and all counsel present as heretofore.

Gary Elofson is sworn and testifies for defendant. Defendant rests as to this motion. The Court rules that all statements made by defendant after he was questioned as to his prior record shall be excluded.

The Court orders that the transcript of these proceedings, Volume 32, page 2181, line 18 shall be amended by deleting "A" and substituting "Q"; on line 21 deleting "Q" and substituting "A"; on line 22, deleting "Q" and substituting "A"; and on line 23 deleting "A" and substituting "Q".

The Court clarifies its ruling on 10-30-84 in which it denied sanctions due to the unavailability of evidence. The Court now states that this would not preclude any instructions which might be given to the jury.

Defendant has two motions relating to the pre-trial identification by Beverly Allen: (1) the fairness of the procedure, and (2) whether or not an attorney was present when the photographs were shown to her. The People state that no counsel was present when she was shown the mug show-up folder.

Defendant elects to take charge of this motion himself. Co-counsel Daugherty requests a Marsden hearing out of the presence of the District Attorney and with the courtroom cleared.

WITH THE COURTROOM CLEARED: Co-counsel Daugherty expresses his c. ncern about defendant's examining Beverly Allen himself because of the danger of his revealing evidence acquired by the defense team prior to trial.

WITH ALL PARTIES PRESENT: The Court raises the question about the authority to retain/ advisory counsel

Robusto in addition to having co-counsel Daugherty if defendant continues in pro per at the time of trial.

Page 1 of 2

MINUTE ORDER

MINUTES ENTERED
11-5-84
COUNTY CLERK

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. ROBERT EDWARD STANSBURY, Defendant and Appellant.	S004697 Super.Ct. No. A529247

BY THE COURT:

Defendant Robert Edward Stansbury was convicted by jury of the first degree murder (Pen. Code, § 187)[1] of Robyn Jackson; lewd act on a child under the age of 14 (§ 288, (b)); rape (§ 261, (2); and kidnapping (§ 207). The jury found true three special circumstance allegations: murder in the commission of a kidnapping (§ 190.2, subd. (a)(17)(ii); murder in the commission of rape (§ 190.2 (17)(iii)); and murder in the commission of a lewd act on a child (§ 190.2 (17)(v)). The jury also found true allegations that defendant had inflicted great bodily injury in connection with the noncapital offenses (§§ 1203.075, 12022.7, 12022.8) and that defendant committed the offenses while on parole (§§ 1203.085, (a), 3000).

The jury fixed the penalty at death. This appeal is automatic. We conclude that we should affirm the judgment in its entirety.

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[1] All further statutory references are to the Penal Code unless otherwise noted.

= SEE CONCURRING AND DISSENTING OPINIONS =

I. FACTS

A. Guilt Phase

1. Prosecution Case

On September 28, 1982, defendant, a tall red-headed man with a beard, drove an ice cream truck on a sales route around the Baldwin Park neighborhood of Los Angeles. He accidentally drove the truck into a fence around 5 p.m. and he cooperated with the property owner in trying to fix the fence. The owner observed nothing wrong with defendant's truck; it appeared to operate normally. Defendant left the scene between 5:30 and 5:45 p.m. A competing ice cream truck driver also saw defendant in the neighborhood that afternoon, and again, his truck appeared to be functioning well and traveling at speed.

Robyn went to the Geddes School in Baldwin Park around 6 p.m. that evening. A neighbor saw a white ice cream truck near the school about that time, and the neighbor's son saw Robyn talking to the ice cream truck driver in front of the school. The boy looked away, and when he looked back, Robyn was not to be seen and the truck was making a U-turn and driving away. He identified the driver as a man with red hair and a beard. The child said that Robyn often talked to the ice cream truck driver and, unlike any of the other neighborhood children, received gifts of candy and ice cream from him. He identified a picture of defendant as he looked with long hair and a beard as the driver of the ice cream truck Robyn frequented.

Beverly Allen, a gas station attendant, saw a large white ice cream truck arrive at her station about 6:30 p.m. on September 28, 1982. Her Sears U.S.A. gas station was located in Covina, and she saw the truck arrive from the east on Arrow Highway. She saw a young man (not defendant) with blond hair buy gas and ask someone in the truck to be dropped off by the freeway. Mrs. Allen saw defendant standing by the passenger door of the truck, and observed Robyn inside, looking unhappy. Mrs. Allen was somewhat uncertain about her identification of defendant.

Defendant did not return to his home in Pomona until 9 p.m. that evening. He borrowed his roommate's turquoise automobile around midnight, first driving it next to his truck for a few minutes. He returned around 3 a.m.

About 1:15 a.m. Andrew Zimmerman saw the turquoise car in Pasadena. He saw a large person get out of the car, the door of which made a memorable popping sound, and throw something in a flood control channel. Mr. Zimmerman telephoned the police, who arrived about 1:30 to discover the body of Robyn in the flood control channel. Mr. Zimmerman positively identified defendant's roommate's car as the one he had seen that night.

There was medical evidence that before her death, Robyn had been put in a cold, oxygen-deprived environment, such as an ice cream freezer. There was evidence of a rape, and there was evidence of saliva deposited by a nonsecretor on the victim's genital area and nipple. The victim was a secretor; defendant, like only 20 percent of the population, was not. The cause of death was asphyxia

complicated by blunt force trauma to the head. The coroner was of the opinion that Robyn died when her head struck the concrete floor of the flood control channel.

Defendant spoke to the police on the night after the crime, and said he had seen Robyn the day before about 6 p.m. He said he left her about that time, and continued his route. He said his truck had not been operating properly, and he had been compelled to take a circuitous route home via the Arrow Highway, to avoid hills. He said he stopped for gas at an off-brand station on the Arrow Highway. He explained that he spent the evening watching television and dozing, and that when he woke around midnight, he borrowed his roommate's car to go get something to eat at the Sambo's restaurant on Indian Hill Boulevard in Claremont. A waitress who worked at that restaurant and was familiar with defendant testified that he had not been there that night.

A Los Angeles County jail inmate testified that defendant told him he had offered a little girl some ice cream or candy to get her to go around and sell his wares with him. Defendant said he was being charged with the murder of this little girl.

2. Defense Case

Defendant testified in his own behalf. He confirmed that he had been in the Baldwin Park neighborhood on September 28, 1982. His ice cream truck developed engine trouble in midafternoon. He saw Robyn around 6:15, when she asked him for candy. He often gave free candy or ice cream to poor children. He left her by the Geddes

School, and continued on his route, making a few more sales. Then he headed home, traveling between five and seven miles per hour. He did not go home via Arrow Highway, as he admitted he had previously told the police, but by another route. He bought gas at a Shell station on Azusa Avenue, not at Beverly Allen's Sears U.S.A. station. It was stipulated that a receipt for gas bought at this Shell station on that date was found in his ice cream truck.

Defendant testified that he returned home around 9 p.m., and when his roommate awoke him around midnight, asked to borrow the roommate's car. He pulled the car out, stopped near his truck for cigarettes, then went to the Sambo's restaurant on Central Avenue in Chino. He denied telling the police he had gone to the Sambo's on Indian Hill. He stopped at a gas station to buy gas for the next day, when he planned to ask for the loan of the car again. At the gas station, a woman approached him and asked for a ride, which he provided. This woman testified, confirming that she received a ride from defendant about 1:50 a.m.

There was some evidence that it would have been difficult to pump gas into defendant's truck from the position in which Mrs. Allen observed it. There was also evidence that the lighting conditions at the place Mr. Zimmerman observed the turquoise car would tend to distort colors. A defense medical expert was of the opinion that the victim had died before she was thrown into the channel, between 7:30 and 8:30 p.m., and that the cause of death was strangulation. He said there was no evidence that the child had been in a cold, oxygen-deprived environment before her death.

There was no physical evidence of the victim's presence in defendant's truck. There was also no physical evidence of defendant's presence in the truck, which was extremely dirty.

B. Penalty Phase Evidence

The prosecutor presented evidence that when defendant was 20 years old, he violently assaulted and sexually abused 2 boys, then ages 10 and 9. He threatened to kill the children, and forced one to dig a grave. Defendant was convicted of lewd conduct with a child for these activities. Another witness described defendant's crimes against her; he offered to help her after she experienced car trouble, but instead beat her, raped her, and took her valuables. He held a knife to her back and spoke of disposing of her body. He was convicted of rape, robbery and kidnapping.

Both witnesses spoke of their humiliation, rage and fear after these traumatic events.

Evidence was also presented of defendant's convictions for the armed rape of a 14-year-old girl, for a later offense of kidnap and rape of an adult woman, and for possession of a firearm by an ex-felon.

Defendant's parole officer testified that defendant told him he was unemployed. The officer testified that he would not have permitted defendant to be employed as an ice cream truck driver in light of his history of violent sexual offenses against children.

Defendant presented no evidence and did not argue to the jury.

II. GUILT ISSUES

A. Faretta Claims

1. Alleged Interference With Defendant's Right of Self-representation

Defendant claims that the court so interfered with his Sixth Amendment right under *Faretta v. California* (1975) 422 U.S. 806 (hereafter Faretta) to represent himself, that the entire judgment must be reversed. We disagree.

Jury selection began on January 7, 1985. The issue of who would represent defendant and under what terms, however, had occupied a significant part of the pretrial proceedings.

From the date of the arraignment on November 23, 1982, until a conflict of interest was declared on July 7, 1983, defendant was represented by the public defender. On the latter date the court relieved the public defender and appointed Attorney David J. Daugherty to represent defendant. On September 12, 1983, the court granted defendant pro se privileges in county jail, but otherwise continued his representation by Daugherty. On May 7, 1984, the court appointed Attorney Anthony R. Robusto as cocounsel with Daugherty.

Defendant subsequently filed a motion to represent himself pursuant to Faretta, supra, 422 U.S. 806. At an in camera hearing on July 31, 1984, after lengthy discussions of the matter with defendant, the court offered him four options. First, the court offered defendant "pure" *Faretta* status, i.e., he would be allowed to represent himself without the assistance of any lawyer. Second, the court

offered to allow defendant to represent himself with the assistance of both Daugherty and Robusto as "advisory counsel." The court explained that advisory counsel would not be permitted to participate directly in the trial as advocates, but that defendant could confer with them at any time during the proceedings on questions of law or tactics, e.g., how to question certain witnesses and what motions to make. Third, the court offered to allow the defendant to represent himself with one of his two lawyers as his "cocounsel." As authority for the offer, the court drew an analogy to its statutory power to appoint a cocounsel for a capital defendant's appointed counsel – here, defendant representing himself – if the case warrants it. (§ 987, subd. (d).) The court explained that in contrast to "advisory counsel," cocounsel would have the right to participate directly in the trial, e.g., by examining witnesses or addressing the court or jury. Fourth, the court offered to continue matters as they were, i.e., with defendant as the client and Daugherty and Robusto as his lawyers.

Seeking clarification of the third option, defendant asked whether he would be allowed to act as chief or lead counsel if his lawyer was appointed as his cocounsel. The court replied that he would. Defendant then asked if such status as chief counsel would give him "the right to make any final decisions in the matter . . . regardless of how foolish they may be." The court said that it would. The court explained, however, that if defendant and his lawyer became cocounsel, they would be required during the trial to elect which of them would conduct the examination of any given witness or make any given motion;

either, but not both, would be allowed to do so in each instance.

With these understandings defendant chose the third option, i.e., to become cocounsel with Daugherty but to act as lead counsel of the team. The court specifically found that defendant knowingly and intelligently waived his right to be represented by counsel – indeed, by two counsel – and elected to substitute himself as one of those counsel, and to proceed with Daugherty as his cocounsel and himself as his chief counsel. The court then formally granted defendant's motion to proceed in propria persona and appointed Daugherty as his cocounsel. Finally, the court directed Robusto to serve as advisory counsel.

During the ensuing three months the court held numerous pretrial hearings on motions made either by defendant or by Daugherty. On the basis of that experience the court became concerned about an apparently growing conflict between defendant and Daugherty over the substance and strategy of the defense. The court expressed doubts that the arrangement – i.e., with defendant and Daugherty acting as cocounsel – would be workable when the proceedings reached the trial stage; the court also doubted that defendant's right to represent himself included a constitutional right to a full-fledged cocounsel as well as an advisory counsel. At an in camera hearing on November 7, 1984, after further lengthy discussions of the matter with defendant, the court reaffirmed defendant's pro se status and relieved Daugherty as his cocounsel. At defendant's insistence, however, the court immediately reappointed Daugherty as "assistant counsel" for defendant. The court explained that defendant would thereafter have the power to "make all the

decisions" concerning the conduct of the defense, and that Daugherty as assistant counsel rather than cocounsel would no longer have any such power. But the court also stated that if defendant asked Daugherty to do so, the court would permit Daugherty to actively participate in all stages of the trial, e.g., by conducting voir dire, examining witnesses, or making arguments to the jury; the sole restriction was that, as before, any given examination could be conducted either by defendant or by Daugherty but not by both.[2] The new arrangement remained in force throughout the rest of the pretrial proceedings and the trial.[3]

Defendant first contends that although the court granted his *Faretta* motion, it thereafter conducted the proceedings in such a way as to deprive him of effective control over his defense and make his *Faretta* right an empty formality.[4] The record refutes this claim. As noted above, when the court authorized defendant to act as chief counsel with Daugherty as his cocounsel, and again when the court recognized defendant as sole counsel with

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[2] The court also relieved Robusto as "advisory counsel," except that defendant could call on him to present any matter that he had specially prepared. Defendant did so several times in the course of trial.

[3] Jury selection began on January 7, 1985, and the trial ended on July 15, 1985.

[4] Defendant limits this claim to the pretrial proceedings and the guilt phase. As will appear, he takes the opposite position in attacking the penalty portion of the judgment, contending that in the penalty phase the court should have intervened in his case and even terminated his pro se status on its own motion.

Daugherty as his assistant, the court made it clear that it was defendant who was actually in charge of the conduct of the defense. On both occasions Daugherty expressly accepted his appointment with that understanding. At numerous points thereafter the court reaffirmed defendant's sole right to control the content and presentation of the defense, Daugherty acknowledged that defendant had that right, and both the court and Daugherty observed that defendant was in fact exercising that right. More important, the record confirms their observations.

To begin with, it plainly appears that at all stages of the proceedings defendant personally and actively participated in the conduct of his defense. Almost a year before granting defendant's *Faretta* motion, the court ordered that he be given pro se privileges in county jail. Thereafter – even though defendant was still represented by counsel – the court allowed defendant to file a number of pretrial motions in propria persona, and ruled favorably to him on certain of those motions. After the court granted defendant's *Faretta* motion and at his request appointed Daugherty first as his cocounsel and then as his assistant counsel, the court entertained an even larger number of pretrial motions personally presented by defendant.[5]

At the hearings on the principal pretrial motions defendant himself conducted the examination of 21 witnesses. Defendant personally selected, interviewed, and

[5] For example, on September 27 and October 4, 1984, the court either considered or ruled on a total of more than 30 motions filed by defendant in propria persona.

retained the two law clerks on the defense team.[6] When the case came on for trial it was defendant who prepared the jury questionnaire. During voir dire defendant personally examined a number of the prospective jurors. Defendant then made his own opening statement to the jury. Throughout the trial defendant continued to make and argue numerous additional pro se motions, including several motions to declare a mistrial and to dismiss. During the prosecution's case-in-chief defendant personally cross-examined seven witnesses, including the key prosecution witness Beverly Allen. During the defense case defendant presented and examined 21 witnesses on his behalf. Defendant then made his own closing argument to the jury. And defendant himself examined additional witnesses both in the penalty phase and at the hearings on posttrial motions.

The record also demonstrates the other half of the equation, i.e., that even after the court granted his *Faretta* motion it allowed defendant to use Daugherty's services in any way he saw fit. In particular, the court let defendant call on Daugherty to act as his counsel at every stage of the proceedings. Thus, Daugherty made and argued a number of pretrial motions for the defense. At the hearings on the principal pretrial motions Daugherty was permitted to conduct the examination of 18 witnesses. Daugherty was allowed to examine the bulk of the prospective jurors on voir dire, as well as the jury-selection experts called by the defense. Like defendant, at trial

[6] The defense team was thus composed of defendant acting as his own attorney, together with two additional attorneys, two investigators, two law clerks, and various experts.

Daugherty also made opening and closing statements to the jury. Finally, Daugherty was permitted to examine a number of the defense witnesses and to cross-examine the majority of the witnesses in the prosecution's case-in-chief and all the witnesses in the prosecution's rebuttal. In each of the foregoing instances Daugherty's participation in the proceedings was apparently at defendant's request or with his consent. Indeed, in his closing brief in this court defendant expressly denies making any claim that "unsolicited and excessively intrusive participation" by his assistant counsel (*McKaskle v. Wiggins* (1984) 465 U.S. 168, 177 [hereafter *McKaskle*]) impaired his right of self-representation.

Instead, defendant contends that right was impaired by actions of the trial court that "usurped defendant's control of defense tactics and strategy." He charges numerous instances of such "usurpation." We have reviewed them all, and find that most are misreadings or exaggerations of the record and the remainder refer to rulings well within the trial court's discretion. Defendant focuses on two main categories of asserted judicial interference with his defense, and we shall discuss those categories in some detail.

Defendant contends that in a number of instances the court "resolved conflicts" between him and Daugherty in favor of the latter. He cites several examples, but none supports his claim. To begin with, in none of these instances did defendant object on the ground he now asserts. And in any event the record is not as defendant portrays it. He claims, for example, that the court repeatedly "accepted Daugherty's representations" that he had furnished defendant with copies of documents that he

needed for the defense despite defendant's statement to the contrary. But this was a factual, not a tactical, disagreement. In *McKaskle, supra,* 465 U.S. at page 179 the Supreme Court declared that *Faretta* rights are adequately vindicated in proceedings outside the jury's presence if, inter alia, "disagreements between counsel and the *pro se* defendant are resolved in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel." (Fn. omitted.) Whether defendant had or had not received copies of certain documents was not a matter of "discretion" but an ordinary question of fact. The record shows that in resolving that question the court did not defer to counsel's personal judgment but simply tried to determine if defendant had actually received copies of all the documents he needed.[7]

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[7] Thus the court asked Daugherty if he had any documents that defendant did not. Daugherty replied that to the best of his knowledge defendant had received copies of all documents in his possession, and that if any other documents turned up he would make sure defendant received them as well. Indeed, Daugherty offered to copy his entire file again for defendant, despite its size and complexity. Seeking a practical solution, the court directed defense investigator Benart to meet with defendant and show him every document in Daugherty's file, to obtain defendant's initials on each document of which he had a copy, and to provide a copy of any that defendant did not have.

Defendant similarly distorts the record in complaining that the court "again deferred to Daugherty's judgment" on the question whether Daugherty had or should have filed certain writ petitions on defendant's behalf. Rather, when the court inquired into the matter Daugherty explained that he had not in fact declined to file such petitions but had simply discussed with defendant the question of the best time to do so, a question that was still unresolved. Daugherty pointed out that the petitions could be filed at any time without prejudice, and offered

Defendant next complains that when Daugherty announced over defendant's objection that the defense was ready to proceed on its motion to suppress under *Miranda v. Arizona* (1966) 384 U.S. 436 (hereafter *Miranda*), the court "compromised defendant's right to control defense tactics" by ordering the hearing to proceed. The record shows, however, that the issue was not in fact one of "tactics" but simply of the timely availability of witnesses. When the court called the *Miranda* motion for hearing, Daugherty stated that the three police witnesses he wished to present were in attendance. Defendant objected on the sole ground that he had specifically requested the presence of several additional police witnesses. The prosecutor explained that the additional witnesses had recently been in the courthouse and stated he would try to secure their attendance at the next day's proceedings. The court replied that whenever additional witnesses were available it would hear their testimony.[8] Defendant voiced no further objection and the hearing began. On the next day the additional witnesses were produced and defendant personally examined them at length. It follows there was no "compromise" of defendant's right to control the tactics of the defense.

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defendant written instructions on how to file them himself if he wished to do so sooner. Defendant apparently had no wish to file them at that time, however, and was making the point merely to bolster his claim of a breakdown in communications between him and Daugherty.

[8] Far from pressing the defense to put on the motion at that time, the court remarked that "I don't care one way or the other, if you proceed with the motion or not."

Finally, defendant complains that the court "acquiesced in Daugherty's decision" that certain pretrial investigations defendant had requested were "not justified." Again the record is otherwise. When the court asked defendant which investigations had not been done, defendant focused on his request that Daugherty hire experts to conduct a telephonic survey of residents of the portion of Los Angeles County from which the jurors would be drawn in order to determine what percentage of them remembered reading about the murder of Robyn in the local press.[9] But the court did not merely defer to counsel's judgment in the matter. Instead, Daugherty explained to the court that at the time in question he had been responsible for disbursing court-authorized county funds for paying defense investigators; that he discussed defendant's idea for a telephonic survey with the company that provides such services and learned it would be a major expense, costing up to $ 20,000; that he was not willing to approve so large an item without specific court authorization; and that the judge to whom the request for authorization was presented declined to grant it. Defendant does not dispute these facts, which fall well short of showing judicial "acquiescence" in a tactical decision by counsel.

In short, defendant points to no instance in which it can be fairly be said that the trial court resolved adversely a conflict between him and his counsel when the

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[9] Defendant proposed to use the results of the survey in the forthcoming jury voir dire, i.e., as a ground for challenging the panel of prospective jurors if the panel answered differently the questions asked in the survey.

matter was "one that would be normally be left to the discretion of counsel." (*McKaskle, supra,* 465 U.S. at p. 179.) On the contrary, the record shows that after the court made defendant solely responsible for the defense and reduced Daugherty's role to that of his assistant, all parties clearly understood and observed their respective rights and duties.[10]

Defendant next contends the court substantially impaired his ability to conduct his defense by threatening to revoke his pro se status in a dispute over tactics. He points to two instances in which he assertedly attempted to stand mute but was told by the court that it would deprive him of his pro se status unless he put on a defense. He relies on *People v. Teron* (1979) 23 Cal.3d 103, 115, in which we said that a pro se defendant "bears no duty to present a defense. He has the right to plead

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[10] Thus with some six weeks remaining before trial the court reminded Daugherty and Robusto that "each of you who are assisting him must realize that the decisions that are made in this case are his decisions to make." Robusto acknowledged that defendant "has now acquired all control over this particular case." And Daugherty reviewed the history of his relationship with defendant as follows: when he and defendant were cocounsel it "was a very difficult role because we were pulling against each other. I admit I was trying to direct the lawsuit in what I felt was Mr. Stansbury's best interest. And sometimes we had some conflicts.

"But since there's been a clarification that Mr. Stansbury is in propria persona and he is definitely running this case and I am assisting him, I think he would agree there has been cooperation on my part, and I have directed Mr. Slaick [a defense investigator] for instance, that he does not listen to me. He's directly taking orders from Mr. Stansbury. He's employed by Mr. Stansbury. So is Mr. Benart. So am I."

guilty, even against the advice of counsel. [Citation.] A fortiori, having put the state to its proof, he has no obligation to try to rebut it." (See also *People v. McKenzie* (1983) 34 Cal.3d 616, 628 [dictum].)

We have recognized that in some circumstances a defendant representing himself, unlike counsel, may elect to refuse to participate actively in his defense. (*People v. Teron, supra,* 23 Cal.3d 103, 115; *People v. McKenzie, supra,* 34 Cal.3d 616; see also *United States v. Clark* (7th Cir. 1991) 943 F.2d 775, 782; *Savage v. Estelle* (9th Cir. 1990) 924 F.2d 1259, 1464, fn. 10; *United States v. McDowell* (6th Cir. 1987) 814 F.2d 245, 250.) We have also observed, however, that when a defendant's threat to stand mute is not motivated by a sincere desire to take that route, but by a desire to disrupt or manipulate the proceedings, the court does not err in terminating the defendant's pro se status. (See *People v. Clark* (1992) 3 Cal.4th 41, 114- 115.)

A reasonable inference that can be drawn from the record is that defendant never actually intended to stand mute at the guilt trial, and that his intermittent threats to do so were simply attempts to pressure the court into agreeing to his procedural demands, to delay the trial, and to interject error into the proceedings.

We examine the record of the two incidents defendant complains of in some detail.

Just before the commencement of voir dire, defendant directed Daugherty to sit in the audience, complaining that there had been a complete breakdown in communication between them. The court offered to relieve Daugherty, but defendant admitted he needed him. He complained that Daugherty had destroyed his

defense, and concluded he would have no option but to put on no defense, and "allow the District Attorney to select the jury that he wishes to select and at least attempt to remain mute throughout the trial because of the fact that my defense has been destroyed." He explained his hope that he would obtain a reversal on appeal, and be able to put on a better defense at a second trial.

The court proceeded in camera, patiently trying to determine what it was that made defendant think he should present no defense. Defendant made a rambling complaint that Daugherty had failed to file five writs of prohibition that were critical to his case, but whose nature he could not immediately recall. The court stated: "Mr. Stansbury, wait a minute. I hate to interrupt. You've been going 20 minutes and you haven't told me anything. [¶] I want you to get to factual matters. I thing [sic] you're trying to delay the start of this trial. If you have something specific, please state it."

It transpired that defendant wanted writ relief from the court's *in limine* rulings on various evidentiary points and on his request for a continuance. Daugherty had told defendant that the writ petitions did not have to be filed and acted on before the commencement of trial, and defendant apparently did not like this accurate legal advice. Defendant also complained that Daugherty had fired his law clerk; it transpired that the law clerk had taken another job because he was not given enough hours of work on defendant's case. (Daugherty explained to the court that defendant had complete control over all six of his law clerks.)

As the court pressed defendant for details, defendant responded vaguely that he had a "great many disagreements" with Daugherty, and said that because his experience was that the court would not replace Daugherty, it was a waste of his time to try to answer the court's questions specifically. Daugherty stated that defendant's interest in the writ petitions was that they be timed so as to cause a delay of the trial, and that he did not think the complaints about the writs or the law clerks were the real reason for defendant's threat to put on no defense.

The court carefully explained that the pretrial writs were still available to defendant, and stated that it was satisfied by Daugherty's representations about the assistance available to defendant from various law clerks. The court informed defendant that if he wanted Daugherty's help, he would have to allow the man to sit at counsel table. The court also cautioned defendant that he would have to behave properly in front of the jury.

Defendant responded that the issue of his behavior would not come up: "Perhaps the court misunderstood me. [¶] I had no alternative but to allow the court and Mr. Burns [the prosecutor] to go forward and select the jury of Mr. Burns's choice, at which time I would have no alternative but to attempt to remain mute throughout the trial."

The court cautioned defendant that from what it knew of the facts, the People's case could well result in a conviction, and that defendant's failure to participate could seriously limit the issues available on appeal. Daugherty commented that he thought defendant was of

the view that "essentially if he sits back and do[es] nothing, he can create error and have a new trial." Daugherty felt this was a terrible gamble, and asked that defendant be given more time to "ponder his choices."

The court, too, was concerned, and discussed the burdens of pro se status with defendant at length. Then the court said, "if you decide you are not going to participate in this case, . . . I'm going to relieve you of your pro. per. status, and I'm going to direct Mr. Daugherty to proceed on the defense of this matter." The court explained that to put on no defense was basically to plead guilty, that "the risk you take is substantial and I think I become party to that risk if you did elect to sit back and not take any steps to represent or defend yourself."

Defendant explained that he could not proceed with Daugherty as assistant counsel because Daugherty had "ruined" everything, but that to try to defend without Daugherty would not work either, because Daugherty's preparation was in support of some defense defendant did not want. Therefore it was better either to not defend at all, or have the court fire Daugherty and "allow me to have an attorney to assist me that I can have some kind of faith and trust in." The court refused to consider appointing another attorney, because such an appointment would require further continuance. The court noted that it had been five and a half months since defendant had been granted pro se status, plenty of time in which to prepare a defense.

Defendant then said he wanted to present a defense. The court seized on this admission, and explained that this is what it would insist on: "If you are going to stand

mute and rely on my previous rulings at this point, up to this point in the trial, I would not allow you to do that. [¶] I think it would be irresponsible for me to allow you to stand mute and let the People present the kind of evidence I know they will present. [¶] And your hope or wishful thinking, whatever flaws in this case are going to be identified by the jury, I think is wishful thinking to the point of being irresponsible."

Defendant agreed with the court that it was wishful thinking to suppose the jury would not convict him if he stood mute, but he argued that a reversal was certain on appeal because of the trial court's errors.

The court responded that a reversal on appeal was not to be counted on, that there was too much at stake, and that it wanted to assure defendant of a fair trial. The court gave defendant until the actual commencement of voir dire to reflect, find authority and convince the court that his was a "legitimate tactic," but gave an indicated ruling that it would not permit defendant to stand mute. The next day, when voir dire was to begin, the court reiterated its ruling that defendant would not be permitted to stand mute.

The record supports the conclusion that defendant lacked a sincere desire not to participate in his defense at the guilt phase of trial. As in *People v. Clark, supra,* 3 Cal.4th at page 114, defendant had eagerly sought to defend himself and had a particular defense strategy in mind when he became disgruntled with some of the court's rulings and with his assistant counsel's attitude. He admitted that he would be kidding himself to think he had any chance of prevailing at trial if he put on no

defense; rather, he sought to interject error into the trial so that the conviction would be reversed on appeal. At the very least, he was operating under the misapprehension that he was sure to prevail on appeal. Both the court and defendant's assistant counsel expressed the opinion that defendant was simply playing for time.

Once a pro se defendant invites advisory counsel to assist him, his standing to complain that counsel interfered with his presentation of a defense sharply diminishes. (*McKaskle, supra,* 465 U.S. at p. 182.) The court retains authority to exercise its judgment regarding the extent to which such advisory counsel may participate against defendant's wishes. (*Id.* at p. 178, fn. 8; *People v. Clark, supra,* 3 Cal.4th at p. 115.) Similarly, we think that the court retains authority to determine whether defendant's expressed desire to stand mute is sincere, or whether it is an attempt to coerce the court. Here, the court went beyond that task by also expressing the opinion that defendant would not have a fair trial if he stood mute; nonetheless, the court also made it clear that defendant's reason for standing mute was not that he had no defense, or that he thought silence was the best defense, but that he was not pleased with the way things were going and thought he was sure to get a second trial where things would go his way. We see no error in a court refusing to permit a defendant to stand mute at trial, when that defendant is attempting to manipulate the legal system while operating under such a basic misapprehension.

That defendant's desire to stand mute was insincere and manipulative is further demonstrated by his earlier threat to do the same thing. Two months before the

commencement of trial, the court indicated that it thought defendant was not entitled to the appointment of two counsel to assist him; after discussion the court appointed Daugherty as assistant counsel and relieved Robusto, who had been appointed in the capacity of advisory counsel. The court added that Robusto could finish working on any matters he had in hand. Defendant immediately threatened to stand mute if he could not have both men assisting him, and if he could not require Daugherty to handle a witness exactly as he, defendant, saw fit. His reason was that the trial court was in error and that the case should proceed rapidly to judgment so that he, defendant, could be vindicated on appeal. He abandoned his position, but his tendency to attempt to blackmail the court with the threat to stand mute is evident.

Defendant complains of a second instance when his desire to stand mute was met with a threat to revoke his pro se status. At the conclusion of the People's case-in-chief at the guilt trial, defendant complained that his defense witnesses would not be called in a certain order, and that therefore, he preferred to put on no defense and stand mute. The court was understandably stunned, and asked "Because we're down to the point we've got witnesses here and you're now pouting because somehow or another you can't get them in a particular order[?]"

The court continued: "Several times during this trial when things haven't gone exactly your way, you begin to withdraw and you get upset and you indicate you're not going to participate. . . . If you decide you don't want to proceed with your witnesses, then we'll – I'll instruct Mr.

Daugherty to proceed with the defense that was originally scheduled by the attorneys that were going to present a defense in this case. [¶] But that's a decision you have to make. Sometimes you have to take witnesses out of order. That's just the way things are."

The court pressed defendant to explain why it was so critical to his defense that his witnesses be called in a certain order, and defendant was utterly unable to do so. The court asked whether defendant would present his defense and defendant persisted: "I'm left with an alternative of no defense because of what is happening here. And I am looking ahead. I see what is happening. I am not totally blind. I have made complaints about this repetitiously since this case has begun with attorney Daugherty."

The court informed defendant that he was simply trying to cloud the record and giving the court a "song and dance" without telling the court what it was he wanted. Defendant grew sulky and repeated that he was thinking of resting the defense. After conferring with assistant counsel, he announced that he would like to rest the defense, but that counsel had informed him that the court would direct assistant counsel to put on the defense he had prepared. Defendant commented that from the court's earlier position, he had no doubt that counsel was right about what the court would do. As he was adamantly opposed to losing his pro se status, he said he would present a defense, but that he needed time to interview some witnesses.

The court pointed out that defendant had had months to interview his witnesses, and that there was no

justification for any delay. The court directed defendant to proceed with his witnesses, or have Mr. Daugherty proceed.

Again, the record supports the inference that at this point in the trial, defendant did not sincerely want to abandon his defense. He had a long list of witnesses to be called, and was so concerned about the proper presentation of his defense that he became irrational when he found he could not present the witnesses in a particular order. His stated inclination not to present any defense was not sincere, but was a petulant reaction to being frustrated regarding the order of witnesses.

It is of course true that defendant ultimately *did* stand mute at the penalty trial. But we must examine the trial court's response to his earlier threats to do so in light of the record available to the court at the time it was called upon to rule. In both instances at the guilt trial, as we have seen, the court justifiably thought that defendant was being manipulative, and that his desire to stand mute was not a sincere decision that this would be the best defense, but an attempt to interject error and delay into the proceedings. By contrast, as to defendant's decision to stand mute at the penalty trial, defendant had made it clear throughout the proceedings that if he were convicted, he would seek the death penalty, and that no defense was to be prepared. He was outraged when he found his investigators had done some work on uncovering defense evidence to be presented at the penalty trial; he was consistently adamant that no defense be prepared or presented.

In sum, we see no improper interference with defendant's right to represent himself. Defendant used the threat to stand mute as a weapon when the court ruled against him. The court was within its power to counter that apparently insincere threat with its threat to revoke defendant's pro se status, which, after all, was not inviolate. (*Faretta, supra,* 422 U.S. at p. 835, fn. 46; *People v. Clark, supra,* 3 Cal.4th at p. 115.)

2. Impact of Confinement on Self-representation.

Defendant complains that the trial court was indifferent to the conditions of his confinement during trial, and that these conditions impaired his ability to represent himself, in violation of the Sixth Amendment of the United States Constitution, article I, section 15 of the California Constitution and *Faretta, supra,* 422 U.S. 806. (See also *Milton v. Morris* (9th Cir. 1985) 767 F.2d 1443, 1446.)

The record is otherwise. The court held hearings so that defendant could air his complaints about the availability of books, lighting conditions, the filling of his prescription for eyeglasses, and four security searches that had occurred in his cell. The court intervened in several instances, and made a factual finding that defendant's legal materials had not been disturbed during two searches, and that defendant had adequate time to reassemble disturbed materials in the case of the searches that did affect his materials. Defendant had two lawyers and several law clerks and investigators at his disposal, as well as access to the law library. He fails to bring to

our attention any fact demonstrating that his confinement unfairly impaired his ability to represent himself.

Thus, for example, when defendant complained that the lighting conditions in his cell and the noise in the jail were impairing his ability to work on his case, we conclude the court was justified in responding after a hearing on the matter that the lighting, though not perfect, was adequate, and that the voluminous output of motions defendant had produced from the cell belied his claim. There had been testimony that defendant could read and study in his cell, and that the lighting was adequate in the library and holding cell.

Defendant also complained that he was wasting time and energy riding on the common inmate's bus from downtown Los Angeles to Pomona and back each day of trial, and that during the many hours a day he spent in transit, other inmates verbally abused him. The court again responded after a hearing that the time in transit did not seem to have impaired the defendant's ability to participate, and that defendant was kept away from other prisoners so that he could not be harmed.

And when defendant complained that the library facilities available to him were inadequate, because, for example, pages had been torn out of the books, the court appropriately pointed out that defendant had not only the jail law library at his disposal, but also the assistance of two lawyers and two law clerks who could and did supply him with legal materials.

Defendant's charge that the court failed to intervene on his behalf to mitigate the effect of confinement on his ability to represent himself is contradicted by the record.

The court ordered that he be given a typewriter in his cell until jail authorities pointed out it could be dismantled and turned into a weapon. The court determined that defendant would have access to a typewriter in the jail library and also indicated it would accept handwritten motions. The court directed jail authorities to place defendant in a library group in which he would not feel threatened. The court ordered two medical appointments for defendant, and ordered that he receive the glasses he needed. He received three pairs of glasses, in all. Defendant was permitted to use the library by himself on weekends to make up for time in court. The court ordered that special accommodations be made so that defendant could visit the jail store on Fridays, when court was not in session.

As for the searches of defendant's cell, defendant again is unable to show how they impaired his ability to prepare his defense. Defendant complained that he had been awakened in the night and subjected to a disruptive search on April 26, 1985, but the court found that the search had not impaired his ability to prepare. The court stated that defendant's preparation would be based mainly on the daily transcripts, which were obviously very easy to reassemble. The court commented that defendant had excellent recall and command of the evidence, and that he would have had five days to reassemble his notes by the time they were required for closing argument.

Another search occurred on May 11, 1985, but this time, defendant's complaint was that the searching officer had an animus against him and intended to harass him

and interfere with his ability to prepare. Again, defendant had several days to reorganize his materials before they were needed for closing argument. Defendant's complaint that searches on May 23 and May 24, 1985, interfered with his preparation of his opening statement for the penalty phase of trial was not credited. The court held a hearing and took evidence from the searching officers, and apparently believed the latter's testimony that they left defendant's materials in the exact order they found them.

Defendant's claim that he was denied reasonable access to resources necessary to enable him to represent himself cannot be sustained. We are satisfied that the trial court adequately assured such access in defendant's case.

3. Knowing, Intelligent Waiver of Right to Counsel.

In the alternative, defendant argues not that his right to represent himself was violated, but that his state and federal constitutional right to counsel was violated because he was not adequately warned of the limitations that would be imposed on his right and ability to represent himself. He argues specifically that he was not advised (1) that the court would limit his control over the defense to be presented, or (2) that his custody status might change and begin to impair his ability to represent himself.

No particular form of words is required in admonishing a defendant who seeks to forego the right to counsel and to represent himself. "The test of a valid waiver of counsel is not whether specific warnings or advisements

were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case." (*People v. Bloom* (1989) 48 Cal.3d 1194, 1225.)

The court repeatedly and laboriously warned defendant of the dangers of self-representation. The record as a whole establishes defendant's competency to make that decision, and he does not now raise the issue of competency. We have concluded that the court did not impinge on defendant's ability to control the defense of his case, nor did the conditions of defendant's incarceration ever impair his ability to defend himself. Accordingly, defendant's argument is based on an inaccurate premise and cannot be sustained.

B. Miranda Violation.

Defendant asserts that evidence of his statements to the police was admitted in violation of his rights under *Miranda, supra,* 384 U.S. 436. Respondent would bar the claim on appeal because at trial defendant incorrectly moved to suppress the statements under section 1538.5, and because defendant failed to renew his motion to suppress when the statements were offered in evidence at trial. Respondent also argues that the statements were admissible despite any *Miranda* violation because they were offered only for impeachment. (See *Harris v. New*

York (1971) 401 U.S. 222, 225; *People v. May* (1988) 44 Cal.3d 309, 319-320.)[11]

It is true that a motion to suppress statements for claimed violations of Fifth and Sixth Amendment rights is not properly brought under section 1538.5. A motion under that section lies to exclude evidence obtained in violation of the right to be free from unreasonable searches and seizures. (*People v. Mattson* (1990) 50 Cal.3d 826, 850-851.)

The trial court clearly understood that defendant's claim was based on the Fifth Amendment and *Miranda, supra,* 384 U.S. 436. The court treated the motion as a nonstatutory motion to exclude under Evidence Code section 402, and we will do the same. (See *People v. Mattson, supra,* 50 Cal.3d at pp. 851-852.)

It is also true that *in limine* motions to exclude evidence normally must be renewed when the evidence is introduced at trial in order to preserve the issue for appeal. (*People v. Morris* (1991) 53 Cal.3d 152, 189.) Nonetheless, as the motion was advanced on a specific legal theory, was directed to a "particular, identifiable body of evidence," and the motion was made "at a time . . . when the trial judge [could] determine the evidentiary question in its appropriate context," we decline to find that the issue was waived for the purpose of appeal. (*Id.*, at p. 190; see also *People v. Boyer* (1989) 48 Cal.3d 247, 270, fn. 13.)

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[11] Defendant's claim that any error affecting the jury's evaluation of his credibility must be deemed prejudicial is not separately addressed, because we have found no such error.

Defendant made statements to the police about his movements on the day of the crime, and these were admitted in the prosecution's case-in-chief. The statements were inconsistent with other prosecution evidence; they were not merely used to impeach defendant's trial testimony, but as substantive evidence of his guilt. Thus, for example, although defendant said to the police that he had gone to a certain Sambo's restaurant at a critical time on the night of the crime, a waitress at the restaurant testified that defendant was a regular customer but that he had not been at the restaurant on the night of the crime. The jury was instructed they could rely on the statements to show consciousness of guilt. As the statements were not simply offered to impeach defendant when he testified, they do not fall within the rule that statements taken in violation of *Miranda* may be used for impeachment. (See *Harris v. New York, supra,* 401 U.S. at p. 225; *People v. May, supra,* 44 Cal.3d at pp. 319-320.)

The question we must resolve is whether defendant was in custody and subject to interrogation when the statements were made. The trial court found that defendant became subject to a custodial interrogation at a certain point in the interview; defendant would have us find the entire interview a custodial interrogation. The trial court's resolution of factual disputes is to be affirmed if it is based on substantial evidence. (*People v. Mickey* (1991) 54 Cal.3d 612, 649; see also *People v. Clair* (1992) 2 Cal.4th 629, 679.) "We must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly

found by the trial court, whether the challenged statement was illegally obtained." (*People v. Boyer, supra,* 48 Cal.3d at p. 263.)

Custody " 'occurs if the suspect is physically deprived of his freedom of action in any way or is led to believe, as a reasonable person, that he is so deprived.' " (*Green v. Superior Court* (1985) 40 Cal.3d 126, 133-134, quoting *People v. Arnold* (1967) 66 Cal.2d 438, 448; see also *Berkemer v. McCarty* (1984) 468 U.S. 420, 442.) "In deciding the custody issue, the totality of the circumstances is relevant, and no one factor is dispositive. [Citation.] However, the most important considerations include (1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." (*People v. Boyer, supra,* 48 Cal.3d at p. 272.)

Testimony at the hearing on the motion to suppress showed that the officer in charge of investigating the murder of Robyn, Lieutenant Johnston of the Baldwin Park Police Department, had some information indicating that the victim had been talking to an ice cream truck driver before her disappearance. Two ice cream truck drivers, including defendant, were asked to come to the police station for questioning. Johnston was more suspicious of the other driver, as he met the description the officer then had of the driver seen with Robyn just before she disappeared, while defendant did not. As far as Johnston knew, defendant had last seen the victim an hour or so before she disappeared. While the officer was involved in questioning the other ice cream truck driver, he asked Officer Lee, who was not involved in the investigation, to

go to defendant's home in Pomona to ask him if he would come to the Pomona police station for questioning as a potential witness. Johnston steadfastly denied during the hearing that suspicion had focused on defendant at the time he was asked to come to the station. The officer considered defendant merely a potential witness, and so instructed Lee.

Lee and three other plainclothes Baldwin Park police officers arrived at defendant's trailer at 11 p.m., with guns out but not displayed. They were not homicide investigators. They drew their guns for their own protection; they were not familiar with the area and did not know what to expect. Officer Lee, who talked with defendant, had his gun hidden behind his leg. He had not been told that defendant was a suspect, and had not been told to arrest him if he refused to come to the station. Lee was told to treat defendant as a witness. Defendant was very cooperative and agreed to come in to the Pomona Police Department for an interview. He was given the choice whether to accept a ride with the police or to drive his own car. He accepted a ride and sat in the front seat with Lee, under no restraint. He was placed in an interview room in the jail section of the Pomona Police Department, because Lee was from another police department and did not know whether any other section of the Pomona police station would be open late at night. Johnston came to interview defendant in the jail section interview room because he had experienced difficulties and delays in using the nonsecure area of the police station in interviewing another witness that evening.

Defendant was interviewed by Johnston, and another Baldwin Park officer observed. Neither of them considered defendant to be in custody, and both testified that defendant could have left the interview room had he asked to. He would have needed their help to leave, as he was in a locked interview room in the secure area of the jail. Johnston asked defendant about his movements on the previous day, and defendant recounted them. He said he had seen the victim about 6 p.m., had continued on his ice cream route, and had taken a circuitous journey back to his home Pomona because he was experiencing engine trouble. He described buying gasoline, then arriving home about 9 p.m. When defendant said that he had left his home about midnight in a borrowed turquoise car, Johnston became suspicious, as a witness had seen the victim thrown from a turquoise car in the early morning hours. The officer asked defendant whether he had any criminal record, and defendant admitted prior convictions for rape, kidnapping and child molestation. Johnston terminated the interview, which had lasted 20 or 30 minutes. He conferred with two other homicide investigators and returned to the interview room with them. They advised defendant of his *Miranda* rights, and defendant declared that he did not wish to make any further statements.

The trial court concluded that when defendant was brought to the station, he was not the focus of suspicion. The court noted the information that Johnston had at the time of the interview. This information suggested that the victim had been abducted by another man driving an ice cream truck, and that the conduct of this man when he was contacted as a witness tended to confirm Johnston's

suspicions. It was only when defendant said that he had taken a turquoise car out in the early morning hours that suspicion focused on defendant, and the court suppressed statements made after that point.

The trial court's determination that suspicion focused on defendant only when he mentioned that he had driven a turquoise car on the night of the crime is supported by substantial evidence. All the police officers involved testified that defendant was not considered a suspect until that point in the interview. Defendant was invited, not commanded, to come to the police station for an interview, and he was given the option of driving himself. As we have noted, the officers involved testified that they would have honored his refusal to come to the station, and that they would have let him go during questioning if he had so requested. Defendant did not testify at the hearing; there is no evidence that defendant felt under restraint.

Defendant disputes the accuracy of the trial court's finding, and by implication, the truthfulness of the officers who testified at the hearing. We accept the trial court's finding on this point as supported by substantial evidence, but we also point out that at the time of the interview the police were following many leads. They had not decided that the perpetrator was probably the driver of an ice cream truck, let alone that it was defendant. They had only a small child's observation to connect the abduction to an ice cream truck driver, while an adult witness had actually seen the victim removed from a turquoise passenger car and flung into a ditch. Defendant's insistence that suspicion had focused on him because he was an ice cream truck driver who had been

seen talking to the victim an hour before her abduction ignores the state of information available to the police at the time of the interview.

We also observe that the form of questioning at defendant's interview was not accusatory; the investigating officer simply asked defendant, a potential witness, to describe his movements and observations. (Cf. *Green v. Superior Court, supra,* 40 Cal.3d at p. 132 [questions detailed but not accusatory].) This is not a case in which officers accused defendant of involvement in the crime, or of lying about his movements, or in which the officer confronted the defendant with evidence against him (cf. *People v. Boyer, supra,* 48 Cal.3d at p. 272) or asked for cooperation in lieu of immediate arrest and incarceration. (Cf. *People v. Celaya* (1987) 191 Cal.App.3d 665, 668-669, 672.) This was simply an investigation regarding a lead that had not focused suspicion on defendant. (See *People v. Holloway* (1990) 50 Cal.3d 1098, 1115.) Defendant's answers were for the most part in a narrative form. The interview was brief.[12]

Defendant makes much of his claim that the officers who invited him to the station arrived at his door with guns in their hands. (See *People v. Taylor* (1976) 178 Cal.App.3d 217, 229.) However, as we have noted, Officer Lee, who spoke to defendant, had his gun hidden behind

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[12] Defendant's claim that there is a conflict in the evidence about the length of the interview is not supported by the record. The evidence is that the interview took 20 or 30 minutes. After defendant mentioned the turquoise car, it took an hour or so to decide how to proceed, and to book defendant, but the length of the interview up until that point was a brief 20 or 30 minutes.

his leg. The other officer who testified on the point said his gun was not drawn, but in his hand, not pointed at anyone. There is no evidence defendant saw the guns. In any case, we have said that police display of guns does not alone create a custodial situation. (*People v. Clair, supra,* 2 Cal.4th at p. 679.)

Defendant notes that he was on parole at the time of his encounter with the police, and that this must be considered to have strengthened his impression that he had no choice but to cooperate. But neither the officers who contacted him nor the officers who interviewed him knew he was on parole. Their conduct would not suggest to the reasonable person that they were exerting authority over him under the terms of the conditions of his parole. They solicited his voluntary cooperation, asked if he wanted to drive himself to the station, and conducted him there under no restraint. This was hardly an assertion of authority such that the reasonable person would consider there was no choice but to obey.

Although it is true that defendant was interviewed in a locked room, there is no evidence that he felt that he could not ask to leave at any point. The coercive environment of the police station is not in itself enough to establish that lack of freedom of movement that is essential to custody. (*California v. Beheler* (1983) 463 U.S. 1121, 1125; see also *Oregon v. Mathiason* (1977) 429 U.S. 492.) Officer Johnston testified that he would have released defendant upon his request up until his mention of the turquoise automobile. "Notwithstanding the lock on the interview room door, the evidence does not compel the conclusion that defendant could not have left whenever

he wanted during the interview." (*Green v. Superior Court, supra,* 40 Cal.3d at p. 136.)

We conclude that defendant was not subject to custodial interrogation before he mentioned the turquoise car. The trial court suppressed all statements made after that point; it was not error to refuse to suppress any statement or fruit of a statement made before that point.

C. Failure to Preserve Evidence.

Relying on *People v. Hitch* (1974) 12 Cal.3d 641, defendant claimed at trial that the police violated his state and federal due process rights because they failed to preserve the contents of the ice cream freezer in the ice cream truck he was driving on the night of the crime. He also claimed his due process rights were violated because police removed a gasoline sales receipt from the truck and lost it.

After a very lengthy evidentiary hearing, the trial court rejected defendant's argument and denied his motion for sanctions, but invited defendant to request cautionary jury instructions if the evidence at trial supported them.[13] Defendant did not request any jury instructions on this point.

The police seized the ice cream truck and examined it, including the freezer, for physical evidence of the

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[13] Defendant sought as a sanction a ruling that no prosecution witness could mention the condition of the ice cream boxes found in the freezer of the ice cream truck he had been driving or express an opinion whether the victim had been in the freezer.

victim's presence. Before they removed the contents of the freezer, they photographed most of the interior of the freezer. They found no physical evidence of the victim's presence, apart from some inconclusive evidence that the ice cream boxes were in disarray, that some boxes appeared to have been crushed, and that some ice cream appeared to have melted and refrozen. However, there was no pattern to this crushing or melting. The police criminalist did not consider retaining the freezer and its contents, but released the ice cream truck with its contents to its registered owner. He considered that the contents of the freezer could be reconstructed by using the photographs taken at the time of the search, and that this would be adequate to determine whether a body had been in the freezer.

Defendant argued that failure to keep the freezer with its contents still frozen deprived him of the opportunity to examine the freezer for evidence that no body had been in it. A defense criminalist testified at the hearing on the matter that he would have numbered the ice cream boxes before removing them to search for blood and hair, and then he would have reassembled the boxes as they had been found. He would have kept the freezer in working order or would have kept the contents in some other freezer if that were not possible. As a defense criminalist, he would have examined the ice cream boxes to see if he could demonstrate that they showed no signs of crushing or melting, or other sign that a person had been deposited in the ice cream freezer.

The state's duty to preserve evidence is "limited to evidence that might be expected to play a significant role

in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*California v. Trombetta* (1984) 467 U.S. 479, 488-489, fn. omitted.) This rule supersedes the standard we stated in *People v. Hitch, supra,* 12 Cal.3d 641. (*People v. Johnson* (1989) 47 Cal.3d 1194, 1233-1234.)

Defendant's claim that the exculpatory value of the evidence should have been clear is misplaced. His own expert provided only speculation that the evidence *might* have proved to be of exculpatory value. " 'The mere possibility that an item of . . . information might have helped the defense . . . does not establish "materiality" in the constitutional sense.' " (*People v. Fauber* (1992) 2 Cal.4th 792, 829, quoting *United States v. Agurs* (1976) 427 U.S. 97, 109-110.)

Defendant argues that because the police search of the freezer uncovered no physical evidence such as blood or hair, the freezer contents must be deemed clearly exculpatory. We disagree. The exculpatory evidence that the freezer contained no trace of blood or hair or body fluid was available and before the jury. However, the evidence regarding the condition of the freezer contents was somewhat inculpatory, as there was some evidence of crushing and melting. It is not evident to us, especially given the speculative nature of the testimony of defendant's expert, that the exculpatory value of this evidence should have been clear to the police.

Further, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Arizona v. Youngblood* (1988) 488 U.S. 51, 58.) This requirement is followed in this state. (*People v. Cooper* (1991) 53 Cal.3d 771, 810-811.) The police criminalist did not consider retaining the contents of the freezer because he was satisfied that the photographs adequately recorded the condition of the evidence. The record is devoid of evidence that the police acted in bad faith.

As for defendant's claim that the police violated his due process rights when they lost a gasoline sales receipt they had confiscated from his truck, comparable evidence was available. The prosecution stipulated to the existence of the receipt, and the date and place of the sale. The police had a record of the receipt in the evidence log, also confirming the date and place the receipt was issued. Defendant would have had the court instruct the jury that the receipt would have showed that he bought gas at a particular time; but it is uncontroverted that the receipts from the gas station in question did not contain the time of the sale. Defendant could have contacted witnesses at the gas station to ascertain the time of the sale, but he waited almost two years to do so. By that time apparently no one remembered, but a more timely inquiry could have unearthed the evidence. Thus, comparable evidence of the time of this gasoline sale was available to defendant. In any event, again, there was no evidence that the police acted in bad faith. The receipt was simply lost, despite a major search for it in various record repositories and among the personal and business effects of persons

officially connected with the case. We conclude that there was no due process violation.

D. Prosecutorial Misconduct.

Defendant urges that the prosecutor committed prejudicial misconduct when, in argument to the jury, he urged the jurors to imagine the victim's feelings, made improper statements regarding evidence of defendant's consciousness of guilt and his alibi defense, and vouched for the credibility of a key prosecution witness.

There was no objection to any of these comments and any harm arising from them could have been cured by an admonition. Therefore the issue is waived on appeal. (*People v. Green* (1980) 27 Cal.3d 1, 27; see also *People v. Clair, supra,* 2 Cal.4th at p. 662.)

Even if defendant had preserved his claims, we would find no reversible error.

The prosecutor improperly appealed to the passions of the jury in urging them to consider the suffering of the victim: "Under what we are dealing with here, we are dealing with a 10-year old child who was taken from her home, taken to a place she had never been, experiencing things she had no idea how to deal with. [¶] She was degraded, violated, raped, evidence of oral sex. [¶] *Think what she must have been thinking in her last moments of consciousness during the assault. [¶] Think of how she might have begged or pleaded or cried.* All of those falling on deaf ears, deaf ears for one purpose and one purpose only, the pleasure of the perpetrator." (Italics added.)

We have settled that an appeal to the jury to view the crime through the eyes of the victim is misconduct at the guilt phase of trial; an appeal for sympathy for the victim is out of place during an objective determination of guilt. (*People v. Fields* (1983) 35 Cal.3d 329, 362; see also *People v. Pensinger* (1991) 52 Cal.3d 1210, 1250 [misconduct to ask jury to suppose crime had happened to their children].)

Nonetheless, we find no prejudice. The statement must be viewed in context; final argument extended over a period of four days, and this was but a single reference in a long, complex and otherwise scrupulous argument about the facts of the case. We note also that the jury deliberated for four days, and we do not believe a brief statement of this sort would sway the jury over that long a period. There is no reasonable probability that a result more favorable to defendant would have been reached in the absence of the misconduct. (*People v. Pensinger, supra,* 52 Cal.3d at p. 1250.)

Defendant also complains that in his attack on defendant's alibi defense, the prosecutor committed misconduct by interjecting his personal belief and experience as a prosecutor. Characterizing the defense as based upon lies and deception, the prosecutor said "that's the best case I've ever seen in any case I've ever prosecuted of intentional misrepresentation and consciousness of guilt."

The prosecutor's comment on the evidence was not inappropriate. (See *People v. Rich* (1988) 45 Cal.3d 1036, 1092 [appropriate comment on the evidence to argue " 'I have never seen deliberation and premeditation like that' "].) We disagree that the jury would understand that the

prosecutor was trying to sway them by referring to facts outside the record or to his own personal beliefs regarding defendant's credibility. Defendant omits the prosecutor's very next words: "And if you believe that that's what you were a witness to or subjected to, then you may consider that in deciding that Mr. Stansbury is, in fact, guilty, and that may weigh in your decision." The prosecutor attacked defendant's alibi in argument for two days, meticulously countering every claim and bringing to light every inconsistency and falsehood. It must have been evident to the jury that it was the evidence produced at trial, not the prosecutor's experience, that demonstrated defendant's mendacity and consciousness of guilt. Indeed, the prosecutor more than once reminded the jury that his views were not controlling, but that they should consult their notes and the transcript of the trial. The jury was instructed to the same effect. We conclude that it is not reasonably likely that the jury would have understood the remarks as defendant urges. (See *People v. Clair, supra,* 2 Cal.4th at pp. 662-663.)

Defendant next claims the prosecutor made an improper comment on defendant's courtroom demeanor in his opening statement. (See *People v. Heishman* (1988) 45 Cal.3d 147, 197.) The prosecutor noted that the evidence was that at the time of the crime, defendant had a shaggy beard, and dirty long hair. At trial, he was clean-shaven and well dressed. The prosecutor suggested that this transformation was intended to deceive the jury and the witnesses who would be called upon to identify him. "As you sit in this courtroom right now, you are the victims, the intended targets, the recipients of another con job, if you will. Maybe not so strong. Maybe more on the subtle

ground. But take a look at Mr. Stansbury right now. I invite you to look at him, his appearance, demeanor. You might expect him to be a businessman that you might meet in the street, nice three-piece suit." The prosecutor surmised that the witnesses would not be deceived, and that the defendant's primary motivation in altering his appearance was to give the jury a false impression of his character through his demeanor. He concluded: "That's not important, I suppose. It's his right. He can look and appear anyway he wants to. Just understand, that's all I'm asking, understand what's going on. Draw whatever conclusions you feel are appropriate, whether motives you wish to ascribe, whatever significance you put. When you are here as jurors, you are here to hear and see and feel what you deem to be appropriate. . . . It will be you and you alone who will ultimately decide the facts in this case, on whatever grounds and whatever basis and whatever procedures you think to be appropriate."

Far from being the centerpiece of the prosecutor's argument, as defendant claims, this was a brief detour, halfheartedly undertaken, intended to warn the jury to disregard the defendant's appearance in evaluating his credibility. This was not a case in which the jury was arguably instructed that it could consider a nontestifying defendant's demeanor as evidence of guilt. (Compare *People v. Garcia* (1984) 160 Cal.App.3d 82, 90-91.) The advice to ignore the defendant's demeanor and decide the case on the basis of the evidence is not misconduct. (*People v. Price* (1991) 1 Cal.4th 324, 454.) The suggestion that defendant was a "con man" was an appropriate comment, in colorful terms, upon the evidence to be

introduced at trial. (See *People v. Pinholster* (1992) 1 Cal.4th 865, 948.)

Finally, defendant makes a completely insubstantial argument that the prosecutor improperly vouched for the credibility of prosecution witness Beverly Allen. We disagree with his claim. The argument that Allen was a believable witness who had done a great deal of soul searching was a proper comment on the evidence, not an attempt on the part of the prosecutor to personally vouch for the witness's credibility. (Cf. *People v. Gates* (1987) 43 Cal.3d 1168, 1186-1187.) "Argument that states the prosecutor's conclusions as to the weight of the evidence and conclusions to be drawn from it is proper." (*People v. Clark* (1990) 50 Cal.3d 583, 630.) The claim that the prosecutor used the prestige of the prosecutor's office to display Allen as a strong witness is refuted by the record. The prosecutor said: "We haven't shown her any evidence . . . in this case because I wanted her to make her information as strong or as weak as it was going to be based on what she knew and what she knew alone." (Italics added.) We see no misconduct.

E. Motion for Mistrial.

Defendant argues that the trial court erred in refusing to grant a mistrial after defendant's own witness volunteered under cross-examination that she thought he had recently been released from prison.

Patricia Jackson testified for the defense that she had accepted a ride from defendant on the night of the crime about 2 a.m. Her testimony was offered in support of his

alibi defense. On cross-examination, after asking about her encounter with defendant, the prosecutor asked: "How did you find out about this case?" The witness launched into the following narrative: "Well, that particular – okay. [¶] That evening I got in. And not knowing, I was watching Channel 7 news the next day, which I still didn't put it together at the time that this was the gentleman that I had rode home with. [¶] I never did until the police came a week from then, that Thursday. [¶] And then they told me. And that like kind of confirmed that. [¶] Other than that, I seen the news and what was said and everything. [¶] And I had commented to my mother because I think the news lady had said that this particular person had just got out of prison. I'm not sure." The prosecutor interrupted: "Excuse me. [¶] Now, the question – we're getting a little ahead of ourselves, Mrs. Jackson. [¶] You said the police came by?"

After a few more questions, the court declared a recess. It instructed the witness not to say anything further about defendant having been in prison. It noted for the record that when the witness volunteered the remark about prison, the court heard Daugherty tell defendant to object. Daugherty said he had anticipated the problem, and had told defendant to object that the witness was being nonresponsive even before the damaging statement came out. Defendant explained that he had not objected because he was "hoping that because of the continuing dialogue that it would hopefully be lost." The court noted that it had had no warning that the statement was coming, and that it seemed none of the other participants had foreseen the problem. The prosecutor agreed that he had no idea the witness would make such a statement, and

said that he had done his best to cut off further statements and move the witness along to another topic. He also stated that he had not seen any response from the jury to the statement. The defendant acknowledged that the prosecutor had "artfully" tried to cut the witness off. After conferring with advisory counsel, however, defendant moved for mistrial. The court heard argument but denied the motion without comment.

"A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions." (*People v. Haskett* (1982) 30 Cal.3d 841, 854; see also *People v. Cooper, supra*, 53 Cal.3d 771, 838-839.)

The witness's statement that she had heard defendant had been in prison was clearly improper and nonresponsive. However, the statement was brief, the witness uttered her hearsay assertion without any apparent faith in its accuracy, and the point was never touched on again. Defendant himself originally thought the statement was best left without objection, and he never did ask for any admonition to the jury to disregard it. (Cf. *People v. McLain* (1988) 46 Cal.3d 97, 113.) We find no abuse of discretion in denying the motion for mistrial.

F. Denial of Representative Jury.

Defendant claims that at the time of his trial, jury venires in the Pomona district of Los Angeles County

were not drawn from a representative cross-section of the community, in violation of his rights under the Sixth Amendment of the United States Constitution and article I, section 16 of the California Constitution. He contends that a systematic underrepresentation of Hispanic persons and young people aged 18 to 24 was caused by excuses from service for economic hardship.

"In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." (*Duren v. Missouri* (1979) 439 U.S. 357, 364 (hereafter *Duren*); see also *People v. Bell* (1989) 49 Cal.3d 502, 525, fn. 10.)

As for the first prong of *Duren*, it is established that Hispanics are a distinctive group. (*People v. Howard* (1992) 1 Cal.4th 1132, 1160.) We have not spoken on the question whether the young are a distinctive group; the Court of Appeal has rejected the claim a number of times (*People v. Henderson* (1990) 225 Cal.App.3d 1129, 1153; *People v. McGhee* (1987) 193 Cal.App.3d 1333, 1349, 1351-1352; *People v. Marbley* (1986) 181 Cal.App.3d 45, 47-48; *People v. Parras* (1984) 159 Cal.App.3d 875, 877; *People v. Estrada* (1979) 93 Cal.App.3d 76, 93), as have the majority of federal circuits. (See *Wysinger v. Davis* (11th Cir. 1989) 886 F.2d 295, 296, and cases cited; *United States v. Potter* (9th Cir. 1977) 552 F.2d 901, 905; but see *Barber v. Ponte* (1st Cir. 1985) 772 F.2d 982, 986-989, and cases cited.)

The parties dispute whether the second prong of *Duren* has been met. In support of his motion to quash the venire, defendant presented testimony by an expert showing an absolute disparity in Hispanic representation in four venires of 8.4 percent, and a comparative disparity of 51 percent. "We have previously noted that 'the [United States] Supreme Court has not yet spoken definitively on either the means by which disparity may be measured or the constitutional limit of permissible disparity.' " (*People v. Sanders* (1990) 51 Cal.3d 471, 492, quoting *People v. Bell, supra,* 49 Cal.3d at pp. 527-528.)

We need not determine whether the exclusion of the young falls under the first prong of *Duren*, or whether defendant has shown a significant level of disparity under the second prong of *Duren*, because defendant has failed to establish a prima facie case under *Duren*'s third prong by showing that the disparity he complains of was caused by systematic exclusion.

A defendant cannot carry the burden of showing a systematic exclusion "with nothing more than statistical evidence of disparity. One must, in addition, show that the disparity is the result of an improper feature of the jury-selection process." (*People v. Howard, supra,* 1 Cal.4th at p. 1160.) Defendant claims he has met this burden because his expert testified that the disparity probably arose when jurors summoned for service sought to be excused due to economic hardship.

However, defendant provided no evidence that a more lenient standard was applied to a request for excuse

from service for hardship when Hispanic and young persons made the request. Such evidence is critical to defendant's claim. "While an abuse of discretion in granting excuses for hardship might, in theory, 'upset the demographic balance of the venire' [citation], defendant cannot demonstrate systematic exclusion based upon the even-handed application of a neutral criterion, such as hardship." (*People v. Howard, supra,* 1 Cal.4th at p. 1160; see also *People v. Morales* (1989) 48 Cal.3d 527, 549.) Our review of the evidence produced at the hearing discloses that the Director of Jury Services for the Los Angeles County Superior Court attributed the underrepresentation of Hispanics primarily to the failure of those persons to respond to jury summonses, and to language problems, not to any official response to hardship excuses. Requests for hardship excuses were dealt with according to a uniform, neutral system, and there was no evidence of any lack of neutrality in administering the system for granting these excuses. The other defense expert attributed most of the underrepresentation she discovered to poverty, but did not point to any lack of neutrality in the system for granting hardship excuses. Accordingly, the trial court properly rejected defendant's motion to quash the venire.

III. PENALTY ISSUES.

A. Failure to Present Case in Mitigation.

Defendant presented no evidence or argument to the jury at the penalty trial.

Defendant urges that when a defendant who is representing himself openly states that he will seek the death

penalty and refuse to introduce evidence in mitigation or argue to the jury, it is the obligation of the trial court to revoke the defendant's in propria persona status and appoint counsel to conduct the defense. In essence, he argues that the Eighth Amendment interest in a reliable penalty determination overcomes the defendant's Sixth Amendment interest in self-representation. (His argument, of course, contradicts the position he has taken with respect to the alleged interference with his right of self-representation at the guilt phase.)

Although it is true, as defendant argues, that defendant has no right to waive his automatic appeal from a death judgment (*People v. Massie* (1985) 40 Cal.3d 620, 624), or otherwise seek the state's assistance in committing suicide, it does not follow that a defendant's right of self-representation should be circumscribed as he suggests at the penalty trial. We have consistently held that the failure to present mitigating evidence at the penalty trial does not make the proceeding unreliable in constitutional terms. (*People v. Diaz* (1992) 3 Cal.4th 495, 566; *People v. Deere* (1991) 53 Cal.3d 705, 717; *People v. Lang* (1989) 49 Cal.3d 991, 1030; *People v. Bloom, supra,* 48 Cal.3d at p. 1228, and fn.9.) "[A] verdict is constitutionally reliable 'when the prosecution has discharged its burden of proof at the guilt and penalty phases pursuant to the rules of evidence and within the guidelines of a constitutional death penalty statute, the death verdict has been returned under proper instructions and procedures, and the trier of penalty has duly considered the relevant mitigating evidence, if any, which the defendant has chosen to present.' " (*People v. Diaz, supra,* 3 Cal.4th at p. 566, quoting *People v. Bloom, supra,* 48 Cal.3d at p. 1228.)

Applying this standard, we must reject defendant's claim and hold that the state's interest in assuring a reliable and fair penalty trial has been met.

Defendant argues that the public policy of the state against state-assisted suicide requires reversal of any death judgment entered after the defendant refuses to put on a case in mitigation and seeks the death penalty. However, we have rejected the claim that a court necessarily abuses its discretion in granting a motion for self-representation when the stated purpose of the motion is to obtain a verdict of death, despite the fundamental public policy against state-assisted suicide. (*People v. Bloom, supra,* 48 Cal.3d at p. 1220-1223.) The Sixth Amendment teaches that we should accord the competent defendant, even in a capital case, this much control over his destiny (*Id.* at pp. 1222-1223).[14]

Nor have we been convinced that self-representation under the circumstances defendant describes violates public policy. "First, defendant's proposed strategy by no means ensured the return of a death verdict. . . . [A] jury might well conclude that death was 'too good' for the defendant. . . . Second, if the trier of penalty has determined death to be the appropriate punishment, and the

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[14] Defendant casts as a separate argument the claim that the court abused its discretion when it failed to revoke his in propria persona status, and appoint counsel with directions to put on a case in mitigation. Our understanding of the high value placed on defendant's Sixth Amendment right of self-representation causes us to reject any such obligation. (See *People v. Clark, supra,* 50 Cal.3d at p. 617, *People v. Bloom, supra,* 48 Cal.3d at pp. 1222-1224; see also *People v. Howard, supra,* 1 Cal.4th at p. 1185; *People v. Lang, supra,* 49 Cal.3d at p. 1031.)

death judgment meets constitutional standards of reliability, the judgment cannot reasonably be regarded as the defendant's doing (other than by his commission of the capital crimes) or its execution as suicide. Finally . . . defendant's argument would effectively preclude death penalty prosecution of self-represented capital defendants who decline to present mitigating evidence, as there is no effective means to compel a pro se defendant to make an affirmative penalty defense." (*People v. Bloom, supra,* 48 Cal.3d at p. 1223.)

Defendant argues finally that the absence of a record of mitigating evidence prevents this court from carrying out its obligation to undertake a meaningful appellate review. Any deficiency of the record, however, is defendant's own doing, and he generally cannot be heard to complain of it here. (See *People v. Bloom, supra,* 48 Cal.3d at p. 1220; see also *People v. Clark, supra,* 50 Cal.3d at p. 618.) Appellate review obviously is limited to the evidence as the parties present it, and what is omitted always goes unreviewed. Any trial record has interesting silences; defendant chose not to defend at the penalty trial, and he cannot complain now that that omission inhibits our appellate review.

B. Weighing Aggravating and Mitigating Circumstances.

Defendant argues next that the standard jury instruction on weighing aggravating and mitigating circumstances, like the statute it is based on, created a presumption that death was the appropriate punishment,

and in fact, actually amounted to a directed verdict of death.

The court instructed in the language of section 190.3: "If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death. However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose a sentence of confinement in the State Prison for life without the possibility of parole."

Defendant claims that section 190.3 is unconstitutional on its face because it requires a death verdict despite a juror's view that death is not the appropriate punishment. This court and the United States Supreme Court have rejected this facial attack on the statute. (*Boyde v. California* (1990) 494 U.S. 370, 376-377; *People v. Brown* (1985) 40 Cal.3d 512, 538-541, rev'd on other grounds *sub nom. California v. Brown* (1987) 479 U.S. 538.)

Similarly, we have rejected defendant's argument based on *Adamson v. Ricketts* (9th Cir. 1988) 865 F.2d 1011 that the statute creates a presumption in favor of death because every accused enters the penalty phase with a factor in aggravation – the circumstances of the crime, including the special circumstance finding. (*People v. Duncan* (1991) 53 Cal.3d 955, 978-979; *People v. Andrews* (1989) 49 Cal.3d 200, 230.) In *Adamson v. Ricketts, supra,* 865 F.2d 1011, "the accused bore the burden of demonstrating that death was not an appropriate penalty. In contrast, the instruction given here merely told the jurors that if they concluded the aggravating circumstances outweighed the mitigating circumstances, they were to impose a sentence

of death; but if they determined the mitigating circumstances outweighed the aggravating circumstances, they were to impose a sentence of confinement in the state prison for life without the possibility of parole." (*People v. Andrews, supra,* 49 Cal.3d at p. 230.) Our decision in *People v. Andrews, supra,* 49 Cal.3d 200 did not, contrary to defendant's contention, turn on the modifications of the standard instruction given in that case. As we have said in the past, section 190.3 requires the jury to make a determination whether aggravating circumstances "outweigh" the mitigating circumstances, and we interpret this language to direct the jury to apply normative standards in the weighing process. (*People v. Allen* (1986) 42 Cal.3d 1222, 1277; *People v. Brown, supra,* 40 Cal.3d at p. 541.) Thus, far from being compelled by any presumption in favor of the death penalty, "[t]he jury may decide, even in the absence of mitigating evidence, that the aggravating evidence is not comparatively substantial enough to warrant death." (*People v. Duncan, supra,* 53 Cal.3d at p. 979).[15]

We have acknowledged, of course, that the instruction quoted above has the potential to mislead the jury. (*People v. Brown, supra,* 40 Cal.3d at p. 544, fn. 17.) Assuming, without deciding, the continuing vitality of Brown

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[15] Defendant's reliance on *Odle v. Vasquez* (N.D.Cal. 1990) 754 F.Supp. 749 is unavailing; the court scanned our law without determining whether the aggravation factor contained in section 190.3, factor (a) contains a presumption in favor of death, and decided that a jury instruction telling the jury that the murder verdict was not in itself an aggravating factor dispelled any danger that the jury would consider itself bound by any such presumption.

(see *People v. Proctor* (1992) ___ Cal.4th ___ [typed maj. opn. at p. 67, fn. 12]), we examine the record to determine whether the jury may have been misled to defendant's prejudice. (*People v. Pinholster, supra,* 1 Cal.4th at p. 968; *People v. Hayes* (1990) 52 Cal.3d 577, 642.)

Here, nothing in the prosecutor's argument suggested that the death penalty was mandatory whether or not the jury found the penalty appropriate, nor did the prosecutor call for a mechanical process of counting rather than weighing the aggravating and mitigating factors. Nor did the prosecutor suggest that the existence of aggravating evidence under section 190.3, factor (a) made the death penalty mandatory or presumptively appropriate. The prosecutor told the jury that it must impose the death penalty "if there are more aggravating factors or if the aggravating factors *are more important* that the mitigating factors." The prosecutor spoke of the jury's duty to impose the death penalty but only in the context of a balancing process that resulted in a conclusion that the aggravating circumstances *outweighed* the mitigating circumstances. He argued, in fact, that death was the "appropriate" penalty and that the aggravating circumstances "overwhelmed" the mitigating circumstances. The prosecutor asked the jurors to examine their souls and "follow your own inclinations."

The defense, of course, did not focus the jury's attention on any fact in mitigation, or clarify the normative nature of the weighing process mandated by section 190.3. There was no evidence or argument presented on defendant's behalf. We have never concluded, however, that the absence of a case in mitigation requires reversal under *Brown*. (See *People v. Howard, supra,* 1 Cal.4th at pp.

1185, 1187-1189 [no mitigating evidence or defense argument]; *People v. Sanders, supra,* 51 Cal.3d at pp. 521-525 [same]; see also *People v. Diaz, supra,* 3 Cal.3d at p. 567 [no mitigating evidence, court trial]; *People v. Bloom, supra,* 48 Cal.3d at p. 1230 [same, jury trial].) This was not a case like *People v. Crandell* (1988) 46 Cal.3d 833, 884-885, in which the prosecutor misled the jury regarding its sentencing discretion and we reversed, relying in part on defendant's failure to present any argument to the jury. There, rebuttal was needed to dispel the misconceptions fostered by the prosecutor. (See also *People v. Milner* (1985) 45 Cal.3d 227, 253-256.) Here, by contrast, the prosecutor did not mislead the jury, and we see no reasonable likelihood that the jury was in fact misled regarding the nature of its sentencing discretion. (*People v. Johnson* (1992) 3 Cal.4th 1183, 1250; *People v. Clair, supra,* 2 Cal.4th at p. 663.)

C. Sympathy and Mercy.

Defendant argues that the jury may have construed the instructions, the arguments of the prosecutor and the absence of any evidence in mitigation to mean that they could not consider sympathy for the defendant in making the penalty determination.

The court was not under a duty to instruct sua sponte that sympathy for the defendant may be considered in selecting the penalty. (*People v. Williams* (1988) 44 Cal.3d 883, 955.) The court gave the expanded instruction on factor (k) of section 190.3 recommended in *People v. Easley* (1983) 34 Cal.3d 858, 878, footnote 10. The instruction is

"sufficient to advise the jury of the full range of mitigating evidence, and nothing more is required." (*People v. Edwards* (1991) 54 Cal.3d 787, 841-842; see also *People v. Clark, supra,* 3 Cal.4th at pp. 163-164.) As for the absence of any evidence in mitigation, this was defendant's tactical choice as counsel.

Our reading of the record discloses that the prosecutor said nothing to suggest that sympathy for the defendant based on any evidence in mitigation was, as a theoretical matter, inappropriate in making the penalty determination. He argued that no sympathy was due to the defendant, but not that sympathy or mercy were inappropriate considerations under the law.

Defendant claims that when the court delivered the guilt phase instructions, including the standard antisympathy instruction, the jury would understand that these instructions applied to the penalty phase because the court told the jury these were the instructions that applied to the case. We have held, however, that even if this instruction warning against reliance on " ' "*mere* sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling" ' " is actually delivered with the penalty phase instructions, no error occurs. (*People v. Clark, supra,* 3 Cal.4th at p. 163; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1225.) "Unless misled, a reasonable jury will understand that this instruction does not foreclose compassionate evaluation of the mitigating evidence, but warns only against 'factually untethered' emotion, bias, or outside pressure." (*People v. Gonzalez, supra,* 51 Cal.3d at p. 1225.)

D. Prosecutorial Misconduct.

Defendant claims the prosecutor committed misconduct in closing argument to the jury by commenting on defendant's failure to express remorse or admit responsibility, and by suggesting that the absence of mitigating factors was a factor in aggravation. Respondent argues that defendant waived the claims by failing to object to any misconduct at trial; defendant argues that supporting authority had not been decided at the time of his trial, so failure to object should be excused. Generally, we do deem such objections waived for failure to object. (See e.g., *People v. Allison* (1989) 48 Cal.3d 879, 902-903.) In any event, we reject the claim on the merits. The prosecutor argued that there was no reason to extend mercy to defendant because: "There wasn't a glimmer of remorse or anything we would identity as a human thought or feeling or anything in every incident we see of this man." Such a comment on defendant's remorselessness during and after the commission of the crime would not be understood, contrary to defendant's argument, as a comment on a nonstatutory factor in aggravation. (*People v. Clair, supra,* 2 Cal.4th at p. 686; *People v. Gallego* (1990) 52 Cal.3d 115, 197; *People v. Carrera* (1989) 49 Cal.3d 291, 339.) Nor is it reasonably likely the jury would have understood the prosecutor to argue that defendant's failure to confess to the charged crimes was a ground for imposing the death penalty. (See *People v. Clair, supra,* 2 Cal.4th at p. 686; *People v. Miranda* (1987) 44 Cal.3d 57, 112.) The prosecutor did remark that defendant had not requested forgiveness or admitted responsibility, but this was clearly in the context of the evidence of defendant's

string of prior convictions for violent sex offenses, not his failure to confess to the charged crimes.

Defendant argues in a footnote that any comment on defendant's lack of remorse violated the Eighth Amendment because it interjected a subjective and speculative matter into a proceeding that must be reliably based on reason. (See *Gardner v. Florida* (1977) 430 U.S 349, 358; *Woodson v. North Carolina* (1976) 428 U.S. 280, 305.) It is self-evident that the Eighth Amendment, with its requirement of a reliable fact-finding process, however, does not prevent the jury from evaluating subjective states of mind. The question of the defendant's remorse calls for no more speculation than the question whether, in unadjudicated prior offenses, he had the requisite level of criminal intent, or the question whether he was suffering from extreme mental or emotional disturbance, matters that are clearly within the jury's competence.

We also reject the claim that the prosecutor argued improperly that the absence of any factor in mitigation was itself a factor in aggravation. There is not a reasonable likelihood the jury would have understood the prosecutor to be arguing as defendant suggests. Rather, the prosecutor simply argued that none of the statutory factors in mitigation was present. Thus, for example, he argued that defendant did not act under extreme mental disturbance, but in a cold and calculating manner. The prosecutor was entitled to draw on the evidence to argue that a statutory factor in mitigation was not present. (See *People v. Hardy* (1992) 2 Cal.4th 86, 211.)

E. Double-counting Aggravating Factors.

Defendant contends the jury improperly was permitted to rely on duplicative special circumstance findings as matters in aggravation. He claims that the rape-murder special-circumstance finding and the special circumstance finding of a murder in the course of a lewd act on a child actually described the same conduct, so that it was impermissible for the jury to rely on each as a separate aggravating factor under factor (a) of section 190.3.

We reject the premise. The rape and lewd-act special-circumstance findings required different elements of proof and could be separately considered. (*People v. Griffin* (1988) 46 Cal.3d 1011, 1030 [lewd act on a child not a lesser included offense of rape].) Defendant's entire violent course of conduct was of course relevant to the penalty determination. (*People v. Melton* (1988) 44 Cal.3d 713, 765-769.) In *People v. Melton, supra,* 44 Cal.3d 713, we explained that it was legitimate for the jury to infer that the defendant was more culpable because he not only robbed the victim but also committed a burglary in order to accomplish the robbery and murder. Each of the non-capital offenses involved violations of different interests of the victim, and were separately relevant. The same can be said of the two sex offenses in this case. (See also *People v. Proctor* (1992) ___ Cal.4th ___ [typed maj. opn. at pp. 66-68; *People v. Mickey, supra,* 54 Cal.3d at pp. 691-692; *People v. Sanders, supra,* 51 Cal.3d at p. 529.)

F. Automatic Motion for Reconsideration.

Defendant contends the court erred in considering evidence of the impact of the crime on the victim in ruling on the automatic motion for modification of the penalty verdict. Defendant complains that the court invited the victim's mother to speak at the hearing on the motion, and in ruling on the motion, considered her statements about the youth of the victim and her outrage at the defendant.

Defendant relies on *Booth v. Maryland* (1987) 482 U.S. 496; that authority has been largely overruled in *Payne v. Tennessee* (1991) 501 U.S. ___ [115 L.Ed.2d 720]. (*People v. Thomas* (1992) 2 Cal.4th 489, 535.) The impact of the crime on the family of the victim is a circumstance of the crime that is relevant to the penalty determination under section 190.3 factor (a). (*People v. Thomas, supra,* at p. 535.) To the extent that the victim's mother spoke of matters still barred under *Booth* and *Payne,* that is, "a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence" (*Payne v. Tennessee, supra,* 501 U.S. ___, ___ [115 L.Ed.2d 720, 739] fn. 2) we note that "the broad holding of *Booth* . . . does not extend to proceedings relating to the application for modification of a verdict of death under section 190.4(e)." (*People v. Benson* (1990) 52 Cal.3d 754, 812.) Any error in considering evidence not before the jury was nonprejudicial. (See § 190.4, subd. (e); *People v. Lewis* (1990) 50 Cal.3d 262, 287.) We see no evidence the court was overcome by emotion as it considered the evidence. In the absence of evidence to the contrary, we assume the court is not

affected by such extraneous evidence. (*People v. Fauber, supra,* 2 Cal.4th at p. 866.)

Defendant also claims the court erred in ruling on the motion because it double-counted aggravating factors, treated the absence of mitigating evidence as a factor in aggravation, and considered nonstatutory aggravating factors.

It is true that the court pointed to the circumstances of the charged capital crimes in aggravation twice, once under factor (a) and once under factor (b) of section 190.3. This was error. (*People v. Kimble* (1988) 44 Cal.3d 480, 505.) The error, however, was harmless, as there is no indication the court arrived at its determination by counting up the aggravating factors. (See *People v. Karis* (1988) 46 Cal.3d 612, 652-653.)

The court's reference to defendant's age was not error. "Chronological age, as such, is neither aggravating nor mitigating, but age-related inferences relevant to the choice of penalty may be argued. . . . One such permissible inference is that the defendant is 'old enough to know better.' " (*People v. Clark, supra,* 3 Cal.4th 41, 170.) This was the import of the court's comment.

Contrary to defendant's claim, the court did not treat absence of evidence of extreme mental disturbance as a circumstance in aggravation. The court simply commented that defendant's cold calculation during the crimes indicated that there had been no mental disturbance. The inference to be drawn from this comment is that the court found no evidence in mitigation under factor (d) of section 190.3.

Defendant claims that the court also considered the circumstances of the crime in aggravation under section 190.3, factor (k), a factor in mitigation. The court said: "And any other circumstances [that] extenuate the gravity of the crime even though [they are] not a legal excuse for the crime. I considered that. I have considered the nature of the crime, the age of the victim, the circumstances of the victim's death. And I have considered, Mr. Stansbury, on the other side of this is the fact that you are clearly a man with some potential. [¶] You certainly had a potential at one time in your life. You're not a stupid man. You have a basic intelligence. [¶] There are multiple tragedies. The ultimate tragedy, of course, is what happened to Robyn Jackson. [¶] The other tragedy is waste of what could have been a good mind, and that was yours, Mr. Stansbury. [¶] I have considered those and contributions that you might make or could have made."

Our reading of the record convinces us that the court referred to the circumstances of the crime as the main counterweight to the mitigation it identified under section 190.3, factor (k), that is, defendant's intelligence and sadly wasted potential. Thus the court did not indicate that the circumstances of the crime were to be considered in aggravation under both factor (a) and factor (k), but that they were the counterweight to the mitigation identified under factor (k). Further, the record in no way suggests that the court simply counted the factors in aggravation and mitigation and mechanically arrived at the result; rather, the court weighed the comparative value of the aggravating and mitigating evidence.[16]

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[16] Defendant also argues that the court could not consider the age of the victim under any of the statutory factors in aggravation. However, the victim's age is certainly cognizable under section 190.3, factor (a), which permits the trier of fact to consider the circumstances of the offense. (See, e.g., *People v. Raley* (1992) 2 Cal.4th 870, 915-916.)

G. Miscellaneous Challenges to Death Penalty Law.

Defendant challenges this state's capital sentencing scheme on several constitutional grounds. He claims that the statute and jury instructions fail to provide the sentencer with constitutionally sufficient guidance because they fail to identify for the jury what factors are aggravating and what mitigating. This claim has been rejected repeatedly. (*People v. Raley, supra,* 2 Cal.4th at p. 919, and cases cited.) He also relies on *Stringer v. Black* (1992) 503 U.S. ___ [117 L.Ed.2d 367] to support the claim that section 190.3 is void for vagueness because it fails to guide the jury in determining whether certain factors are aggravating or mitigating. He also claims more specifically that section 190.3, factors (a) and (i) provide particularly inadequate guidance to the jury. We have recently rejected identical claims. (*People v. Zapien* (1993 ___ Cal.4th ___ [typed circulating opinion at pp. 83-84]; *People v. Proctor, supra,* ___ Cal.4th ___, [typed maj. opn. at p. 70]; *People v. Tuilaepa* (1992) ___ Cal.4th ___ [typed maj. opn. at pp. 35-37; *People v. Noguera* (1992) ___ Cal.4th ___ [typed maj. opn. at pp. 72-73.)

Defendant claims that his state and federal constitutional rights were violated because the statute and instructions failed to direct the trier of fact to find beyond a reasonable doubt: (a) that the aggravating circumstances are true; (b) that the aggravating factors outweigh

the mitigating factors; and (c) that death is the appropriate sentence. We disagree. (*People v. Duncan, supra,* 53 Cal.3d at p. 979.) Nor do we agree that the statute is unconstitutional because it fails to direct the jury to make a finding as to what aggravating circumstances were found true. (*People v. Sully* (1991) 53 Cal.3d 1195, 1251-1252, and cases cited.) We have consistently rejected his claim that the statute is unconstitutional because it fails to require jury unanimity on the aggravating factors warranting death. (*People v. Breaux* (1991) 1 Cal.4th 281, 321, and cases cited.)

We have also rejected the claim that the relitigation at the penalty trial of the facts underlying a defendant's prior convictions violates due process or the Eighth Amendment, or double jeopardy. (*People v. Johnson, supra,* 3 Cal.4th at pp. 1240-1242; *People v. Visciotti* (1992) 2 Cal.4th 1, 71.)

There is no constitutional requirement that the court inform the jury that the punishment of life in prison without possibility of parole will actually be carried out. (*People v. Pinholster, supra,* 1 Cal.4th at p. 974; *People v. Bonin* (1988) 46 Cal.3d 659, 698.) Nor must the jury be instructed not to consider prior criminal activity under factor (b) of section 190.3 unless it unanimously finds the activity has been proven. (*People v. Pinholster, supra,* 1 Cal.4th at p. 974, and cases cited.) Finally, the death penalty statute is not unconstitutional under *Godfrey v. Georgia* (1980) 446 U.S. 420, 427 or *Furman v. Georgia* (1972) 408 U.S. 238 for failing to provide for intercase proportionality. (*People v. Mincey* (1992) 2 Cal.4th 408, 476; *People v. Visciotti, supra,* 2 Cal.4th at p. 77; *People v. Adcox* (1988) 47 Cal.3d 207, 274.)

IV.

The judgment is affirmed in its entirety.

COPY
PEOPLE v. STANSBURY
S004697/Crim. 24685

CONCURRING OPINION BY KENNARD, J.

The trial court in this case refused to permit the self-represented defendant to stand mute during the trial. In this respect, the case is indistinguishable from *People v. Clark* (1992) 3 Cal.4th 41, in which this court held that a trial court may terminate self-representation if the pro se defendant's announced intention to stand mute is "part of a deliberate course of conduct designed to cause as much disruption as possible." (*Id.* at p. 116.) I thought this court was wrong (see *Id.* at pp. 174-180 (dis. opn. of Kennard, J.)), and I continue to think so. But repetition of dissenting views is rarely justified, and therefore I "yield to the obligation . . . to live with the law as it has been stated." (Traynor, *Some Open Questions on the Work of State Appellate Courts* (1957) 24 U.Chi.L.Rev. 211, 219; but see also Brennan, *In Defense of Dissents* (1986) 37 Hastings L.J. 427, 436-437.) On the basis of stare decisis, I concur in the majority opinion.

KENNARD, J.

COPY
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S004697

CONCURRING AND DISSENTING OPINION BY MOSK, J.

I have viewed with growing concern the capital cases under our review in which the defendant has been permitted to represent himself. I have become convinced that

because of the interest of society in obtaining a reliable verdict at the guilt and penalty phases of a capital trial, the defendant should not be permitted to waive counsel and represent himself if there is the slightest doubt of his competence to undertake this awesome task in a way that discharges society's interest, as well as his own. (*People v. Clark* (1992) 3 Cal.4th 41, 174 (dis. opn. of Mosk, J.).)

In this case, the defendant appears to be an obstreperous and cunning fool. He made it clear that his original intention was to defend in this complex circumstantial case by deliberately pointing to his prior convictions for violent sex crimes and then arguing that he had been framed because of his record. His assistant counsel and the court urged him in strong terms to abandon this strategy, since a reference to his egregious record at the guilt trial would spell his doom; any doubt the jury had about the strength of the prosecutor's case would likely evaporate. In fact, defendant did not ultimately employ this strategy, and assistant counsel maintained a hand in the defense.

Defendant now complains that the court deprived him of the right to present the defense in his own way. My years as a trial judge, an Attorney General and nearly three decades on this court have convinced me that a defendant facing the gas chamber possesses no objectivity and little competence to act as his own counsel. Here, however, the trial court properly tempered the defendant's ability to commit judicial suicide at the guilt trial by urging him to listen to assistant counsel, and by threatening to revoke his pro se status when the defendant petulantly declared he would stand mute. Because I see the hand of the court and counsel in the presentation

of the defense, I would not, as I have in other cases, urge the reversal of the guilt verdict. (Compare *People v. Clark, supra,* 3 Cal.4th at p. 174 (dis. opn. of Mosk, J.).)

The penalty judgment, however, should be reversed.

Defendant is a manipulator who decided, contrary to the advice of his assistant counsel, to present no evidence or argument in mitigation at the penalty trial. No mitigating evidence had previously been presented at the guilt trial. Throughout the trial defendant expressed the intention to seek the death penalty if the jury found him guilty. He bitterly chastised assistant counsel and his investigators for pursuing any case in mitigation in preparation for the penalty trial. At the 11th hour he sought a 4- to 6-week continuance so that he could contact a witness to a 20-year-old crime and seek his admission that he, the witness, had committed the sex offenses of which defendant had been convicted. Defendant still maintained that he was seeking the death penalty, but wanted the evidence to be accurate. The trial court properly denied the motion for continuance; defendant had more than two years to find the witness. The record is absolutely clear that defendant stubbornly prohibited the presentation of any evidence in mitigation at the penalty trial. There is no indication that defendant was mentally impaired at the time of trial.

Having no sympathy with the efforts of the defendant to manipulate the legal system, and no question that the prosecutor, assistant counsel, defendant's investigators and the court made every effort to conduct a fair penalty trial in the face of defendant's obduracy, nevertheless I still would reverse the penalty verdict.

We should be concerned, not merely with the defendant, who appears on this one-sided record to be a despicable human being, but with the interest of society. It is society that is being asked to forfeit his life. I cannot find that our social interest in a reliable penalty verdict is safeguarded in a case in which none of the available evidence and no arguments are presented on defendant's behalf. (U.S. Const., Eighth Amend.; Cal. Const., art. I., § 17; *People v. Deere* (1985) 41 Cal.3d 353, 360-368; see also *People v. Diaz* (1992) 3 Cal.4th 495, 577 (conc. & dis. opn. of Mosk, J.); *People v. Howard* (1992) 1 Cal.4th 1132, 1197 (conc. & dis. opn. of Mosk, J.); *People v. Sanders* (1990) 51 Cal.3d 471, 531-533 (dis. opn. of Mosk, J.); *People v. Clark* (1990) 50 Cal.3d 583, 639-641 (conc. & dis. opn. of Mosk, J.); *People v. Lang* (1989) 49 Cal.3d 991, 1059-1062 (conc. & dis. opn. of Mosk, J.); *People v. Bloom* (1989) 48 Cal.3d 1194, 1236-1245 (conc. & dis. opn. of Mosk, J.); *People v. Williams* (1988) 44 Cal.3d 1127, 1158-1161 (conc. & dis. opn. of Mosk, J.).)

There is no question that some mitigating evidence was available and could have been presented. The record reveals that assistant counsel and defense investigators had obtained potential mitigating evidence from family members, friends and former employers who were available to say "good things" about defendant. Assistant counsel told the court at the hearing on the automatic motion for modification that "Mr. Stansbury did have a very very hard childhood, a rough childhood where he was not living with a parent or parents for a long period of time. [¶] He was incarcerated and confined in the juvenile institutions from a very very young age. [¶] He has suffered some considerable amount of ill health,

including the loss of his leg. [¶] He has a great deal of bitterness against people because of those early years."

It is entirely defendant's fault that no evidence or argument was presented to the jury, but the consequence of his machinations was that 12 conscientious citizens had to decide whether he should live or die without being provided any reason to extend society's gift of mercy. While I agree with the majority that the prosecutor did not exploit ambiguity in the jury instructions in a way that would mislead the jury, the instructions themselves really made no sense in the context of this case. The references to weighing the aggravating against the mitigating factors, and to the mitigating evidence that defendant might proffer, were essentially meaningless because of the lack of a single piece of mitigating evidence. No jury should be placed in such an untenable position, and no death judgment based on such an unbalanced proceeding should be carried out.

I would remand for a new penalty trial at which defendant would be required to be represented by counsel who would have full control over the development and presentation of a case in mitigation. (See *People v. Clark, supra,* 50 Cal.3d at p. 641 (conc. & dis. opn. of Mosk, J.).)

MOSK, J.

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. ROBERT EDWARD STANDSURY, Defendant and Appellant.	S004697 (Super. Ct. No. A529247)

MODIFICATION OF OPINION

THE COURT:

The opinion of the court herein, appearing at 4 Cal.4th 1017, is modified as follows:

At page 1032, line 29, the phrase "large person" is substituted in place of the phrase "big man."

This modification does not affect the judgment.

No. CR24685
S004697

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

THE PEOPLE, Respondent

v.

ROBERT EDWARD STANSBURY, Appellant

Petition for rehearing DENIED.

Opinion modified.

Filed May 26, 1993

/s/ Illegible
Chief Justice

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IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

REMITTITUR

TO THE SUPERIOR COURT,
COUNTY OF LOS ANGELES

THE PEOPLE
RESPONDENT

VS.

STANSBURY, ROBERT EDWARD
APPELLANT

SUPREME COURT NUMBER: S004697 (Crim. 24685)
SUPERIOR COURT NUMBER: A 529247

I, ROBERT F. WANDRUFF, CLERK OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF AN ORIGINAL JUDGMENT ENTERED IN THE ABOVE-ENTITLED CAUSE ON MONDAY, THE 8TH DAY OF MARCH, 1993.

WITNESS MY HAND AND THE SEAL OF THE COURT, WEDNESDAY, THE 26TH DAY OF MAY, 1993.

ROBERT F. WANDRUFF,
CLERK

BY /s/ M. Jameson
DEPUTY